



# राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, शनिवार, २३ अगस्त, १९९७/१ भाद्रपद, १९१९

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हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH

NOTIFICATION

*Shimla-1, the 18th July, 1997*

**No. HHC/Rules (Vol.-V)/97.**—In exercise of the powers vested in it under Section 23 of the State of Himachal Pradesh Act, 1970, Section 129 of the Code of Civil Procedure, 1908 as amended upto date, Article 225 of the Constitution of India and all other powers enabling hereunto, the High Court of Himachal Pradesh is pleased to make the following rules to apply, so far as may be practicable, to all proceedings taken on the Original Side of the High Court of Himachal Pradesh.

# RULES AND ORDERS OF THE HIGH COURT OF HIMACHAL PRADESH (ORIGINAL SIDE)

## PART-I

### CHAPTER-I

#### GENERAL

1. *Short title and commencement.*—(1) These rules may be called the High court of Himachal Pradesh Original Side Rules, 1997.

2. These rules shall come into force with immediate effect.

3. *Application.*—All proceedings on the original side of the Court instituted or transferred pursuant to provisions of the State of Himachal Pradesh Act, 1970 or any other law shall, unless otherwise ordered by the Court be, governed by these Rules.

4. *Definitions.*—In these Rules, unless the context otherwise requires,—

- (a) "Advocate" means a person who is entitled to practise the profession of law under the Advocates Act, 1961 (Act No. 25 of 1961).
- (b) "Code" means the Code of Civil Procedure, 1908 (V of 1908), as amended from time to time;
- (c) "Constitution" means the Constitution of India;
- (d) "First hearing" includes the hearing of a suit for settlement of issues and any adjournment thereof;
- (e) "Interlocutory application" means an application in any suit, appeal or proceeding, already instituted in the Court, not being a proceeding for execution of a decree or order;
- (f) "Registrar" means the Registrar of the Court and includes Registrar (V), District and Sessions Judge (Rules), Addl. Registrar (Judicial), Deputy Registrars and Assistant Registrar or any other Officer exercising the functions delegated to him under these Rules;
- (g) "Registry" means the Registry of the High Court;
- (h) "Taxing Officer" means the Taxing Officer appointed under Section 6 of the Court Fees Act and includes the Officer of the Court whose duty is to tax costs of proceedings in the court;
- (i) All other expressions used herein shall have the meaning ascribed to them by the Code or the Himachal Pradesh General Clauses Act, 1968 (16 of 1969), as the case may be.

5. *Steps to be taken on the Registry.*—Where by these rules or by any order of the Court, any step is required to be taken in connection with any suit, appeal or proceeding before the Court, that step shall, unless the context otherwise requires, be taken in the Registry.

6. *Period how calculated.*—Where a particular number of days is prescribed by these Rules or by or under any other law or is fixed by the Court for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Court is closed, that day and any succeeding days on which the Court remains closed shall also be excluded.

7. *Forms to be used.*—The forms set out in the Code with such modifications or variations as the circumstances of each case may require, shall be used for the purposes therein mentioned. Where no form required for any purpose is prescribed, a form approved by the Registrar may be used.

8. *How decree, order, writ, etc., to Issue.*—Every decree, order, writ, summons, warrant or other mandatory process shall be issued in the name of the Chief Justice and shall be signed by the Registrar or any other officer specifically authorised in that behalf, with the day, month and year of signing and shall be sealed with the seal of the Court.

9. *Official Seal.*—The official seal to be used in the Court shall be such as the Chief Justice may from time to time direct and shall be kept in the custody of the Registrar.

10. *Custody of the Records.*—The Registrar shall have the custody of the records of the Court and no record or document filed in any cause or matter shall be allowed to be taken out of the custody of the Court without the leave of the Court.

11. *Hours of sittings.*—Unless otherwise ordered by the Chief Justice, the Court shall hold its sittings on all working days from 10.00 A.M. to 1.00 P.M. and from 2.00 P.M. to 4.15 P.M.

12. *Office hours.*—The offices of the Court shall remain open daily from 9.15 A.M. to 4.45 P.M. Any urgent matter filed before 12.30 P.M., shall be put up before the Court on the following working day:

Provided that the court may permit any matter to be put on the same day or next day respective of the time of filing.

13. *Process and copying fee.*—In all proceedings on the Original Side of the Court process fee and copying fee shall be charged as may be prescribed from time to time.

14. *Court's power to dispense with compliance with the Rules.*—The Court may, for sufficient cause shown, exempt the parties from compliance with any of the requirements of these Rules and may give such directions in matters of practice and procedure as it may consider just and expedient.

15. *Application for the above purpose.*—An application for being exempted from compliance with the requirements of any of the rules shall, in the first instance be placed before the Registrar, who may without interfering or dispensing with any mandatory requirements of the rules, make appropriate orders thereon, or, if in his opinion, it is desirable that the application should be dealt with by the Court, direct the applicant, if the other party has entered appearance, to serve a copy thereof on the said party, and thereafter place the same before the Court on a convenient day for orders.

16. *Court's power to enlarge or abridge time.*—The Court may enlarge or abridge the time appointed by these rules or fixed by any order enlarging time, for doing any act or taking any proceeding upon such terms if any as the justice of the case may require, and any enlargement may be ordered, although the application therefor is not made until after the expiration of the time appointed or allowed.

17. The Court may at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in Chapter XIV of these Rules.

18. *Miscellaneous.*—Except to the extent otherwise provided in these rules, the provisions of the Code shall apply to all proceedings on original side.

## CHAPTER-II

### EXERCISE OF ORIGINAL CIVIL JURISDICTION

1. *Jurisdiction to be exercised by a Single Judge.*—Every suit coming before the Court in its Ordinary Original Civil Jurisdiction shall be tried and heard by a Single Judge.

2. *Reference to two or more Judges.*—A Judge before whom any suit, application or other proceeding, interlocutory or otherwise, is pending may, if he thinks fit, refer it or any question of law, practice or procedure arising therein to the Chief Justice for constituting a Bench of two or more Judges to decide the same. If only a question has been referred, the Judge shall, after receipt of a copy of the judgment of the Bench so constituted, proceed to dispose of such suit, application or proceeding in conformity therewith.

3. *Powers of the Registrar.*—The powers of the Court in relation to the following matters may be exercised by the Registrar :—

- (1) Admission of Plaints;
- (2) applications to amend the plaint, petition or subsequent pleadings where the amendment sought is formal;
- (3) applications for the admission or appointment of a next friend or guardian *ad litem* of a minor or a person of unsound mind or new next friend or guardian *ad litem*;
- (4) applications for orders regarding issue of summons or notices and regarding service thereof;
- (5) applications for fresh summons or notice and for short date summons and notices;
- (6) applications for orders for substituted service of summons or notice;
- (7) applications for transmission of process for service to another Court;
- (8) applications for particulars;
- (9) applications for further and better statement of particulars under rule 5 of O. VI of the Code;
- (10) applications for better statement of claim of defence;
- (11) applications for orders for discovery and for orders concerning the admission, production and inspection of documents;
- (12) applications for leave to deliver interrogatories;
- (13) applications for return of documents under Order XIII, rule 9 (i) of the Code; and applications for return of exhibits if they are not contested;
- (14) Summoning witnesses and taking proceedings against them for failure to comply therewith as provided in Order XVI of the Code;
- (15) applications for orders for the transmission of a decree with the prescribed certificate etc.;
- (16) applications for the execution of a document or for the endorsement of a negotiable instrument under O. XXI, rule 34 of the Code;
- (17) applications for examination of judgment-debtor as to his property under O. XXI, rule 41 of the Code;
- (18) applications for discharge from custody for the non-payment of subsistence money;
- (19) applications for leave under O. XXI, rule 50, sub-rule (2) of the Code except where liability is not disputed;
- (20) applications for the issue of proclamations of sale under rule 66, and for direction as to the publication thereof under rule 67 of O. XXI of the Code;
- (21) applications for confirmation of sale and certificate of sale to purchaser of immovable property;
- (22) applications for possession under O. XXI, rules 95 and 96 of the Code;
- (23) applications for special directions to the officer concerned as to the service or execution of any process of the Court;

(24) uncontested applications for orders for payment of money realised in execution or otherwise deposited in Court including uncontested applications to share the assets realised under Section 73 of the Code;

(25) Applications under Section 52 of the Code or Order XXII of the Code for bringing on record the Legal Representatives of a deceased party:

Provided that no order of substitution or revivor shall be made by the Registrar.—

(i) where a question arises as to whether any person is or is not a legal representative of the deceased party, or

(ii) where a question of setting aside the abatement of the cause is involved;—

In such a case the Registrar shall after making an inquiry place the matter with his report and the findings before the Judge in Chambers.

(26) applications for extension of time under O. XXVII, rule 7 of the Code, or by a party in default for further time to file written statement or affidavit of documents;

(27) applications for statement of names and disclosure of partners' addresses and residence under O. XXX, rules 1 and 2 of the Code;

(28) applications for orders requiring a party to a suit or matter to produce and leave with the registrar any document not in the English language in his possession for the purpose of being officially translated;

(29) applications for orders for the production of records or documents, or accounts filed in such records before any other Court;

(30) applications for the issue of a precept to another Court for the production of a record of such Court or of notice or summons to a Public Officer for the production of public records or registers;

(31) applications for the taxation and delivery of bills of costs;

(32) applications for production, inspection of a will or a copy thereof;

(33) applications for enlargement or abridgement of time except where time is fixed by the Court;

(34) other interlocutory applications directed by the Judge hearing the case to be placed for disposal before the Registrar; and such other applications as by these rules are directed to be so disposed of but not included in this rule;

(35) Any matter which in accordance with orders or directions issued by the Court is required to be dealt with by the Registrar;

(36) Power to order for proceeding *ex parte* against a defendant/respondent who has failed to appear before the Registrar despite due service of notice in any matter which can under these rules be dealt with by the Registrar.

(37) Applications for condonation of delay in removing the objections raised by the Registry upto a period of four months in the aggregate.

4. All applications except those in which urgent *ex parte* orders are sought, will be placed before the Registrar in the first instance. He will dispose of such of them as he is empowered to do, and as regards the rest, may call for replies and rejoinders and take such other steps as are necessary to make them ready for hearing before listing them before the Court.

5. *Appeal against the Registrar's orders.*— Any person aggrieved by any order made by the Registrar under Rule 3 above or Rule 2 (b) of Chapter IV of these Rules may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers. The appeal shall be in the form of a petition bearing Court fee stamp of the value of Rs. 2.65 Ps.

6. *Disposal of matters by Judge in Chambers.*—The following matters may be heard and determined by a Judge in Chambers:—

- (1) appeal from the order of the Registrar or a reference made by him or directed to be made by the Judge in Chambers;
- (2) applications for arrest before judgement, for attachment before judgement and for appointment of a receiver;
- (3) applications by defendant where he pleads a set-off under rule 6 of O. VIII of the Code;
- (4) applications by defendant for setting up a counter-claim and applications in relation thereto;
- (5) applications by receivers, guardians and others relating to the management and disposal of the property;
- (6) applications for leave under sub-rule (3) of rule 2 of O. II of the Code;
- (7) applications under rule 4, O. II of the Code to join causes of action in a suit for the recovery of immovable property;
- (8) applications for stay of execution under rule 26 (1) and (2) of O. XXI of the Code;
- (9) applications for separate trials of different causes of action joined in one suit;
- (10) applications for setting down for judgment in default of written statement;
- (11) applications for amendment of pleadings and for enlargement of time to amend pleadings;
- (12) applications to tax bills returned by the Taxing Officer;
- (13) applications for review of taxation;
- (14) applications for leave to defend under rule 3 (5) of Order XXXVII of the Code;
- (15) applications for execution of decree or order, or for arrest of a judgment-debtor when such judgment-debtor does not appear on the day of hearing fixed under the notice issued or on such day as the hearing thereof may be postponed to, or by attachment or sale, with power to order issue of notice under Sections 74 and 145 and under rules 2, 16, 22, 34 (2), 37 or 66 (2) of O. XXI of the Code;
- (16) Any other application other than those set out in Rule 3 above.

### CHAPTER-III

### FORM OF PLEADINGS

1. *Pleadings how written.*—(a) Every plaint, written statement, application, petition and the like presented to the Court:—

- (i) shall be in English;
- (ii) shall be fairly and legibly written, type written, lithographed or printed in double spacing on one side or standard petition paper with an inner margin about four centimeters width on top and on the left side;
- (iii) *Cause title.*—shall be instituted “in the High Court of H.P.” and shall state the jurisdiction.
- (iv) *Paragraphs.*—shall be divided into paragraphs, numbered consecutively, each paragraph containing as nearly as may be a separate allegation.

(b) *Dates.*—Where Saka or other dates used corresponding dates of Gregorian Calendar shall also be given.

(c) *Names etc. of parties.*—Full name and parentage, description of each party and address and if such is the case the fact that a party sues or is sued in a representative character shall also be set out at the beginning of the plaint, petition or application and need not be repeated in the subsequent proceedings in the same suit or matter.



(d) The names of parties shall bear consecutive numbers and a separate line should be allotted to the name and description of each party. These numbers shall not be changed and in the event of the death of a party during the pendency of the suit or matter, his heirs or representatives if more than one shall be shown by sub-numbers. Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(e) Every pleading shall state immediately after the cause title the provision of law under, which it purports to be made.

2. *Endorsements and verification.*—At the foot of every pleading, there shall appear the name and signature of the Advocate, if any, who has drawn it and also the name of a Senior Advocate, who may have settled it. Every pleading shall be signed and verified by the party concerned in the manner provided by the Code.

3. *Particulars to be stated in Address for service.*—The address for service shall be filed with every initial pleading, petition or application on behalf of a party and shall as far as possible contain the following :—

- (i) the name of the road, street, lane or Municipal or other number of the house;
- (ii) the name of the town or village;
- (iii) the post office or postal district; and
- (iv) any other particulars necessary to identify the addressee.

4. *Initialling alteration etc.*—Every interlineation, erasure or correction in any pleading, petition or application or like document shall be initialed by the party or his recognized agent or advocate presenting it.

5. *Translation of documents.*—(1) No document in a language other than English intended to be used in any proceeding before the court shall be received by the Registry unless it is accompanied by a translation in English :—

- (i) Certified to be a true translation —
  - (a) by a counsel engaged in the case; or
  - (b) by any other counsel whether engaged in the case or not, provided a counsel engaged in the case authenticates such certificate;
- (ii) prepared by an official translator of the court on payment of the prescribed charges; or
- (iii) prepared by a translator specially appointed or approved for the purpose by the Registrar on payment of such charges as he may order.

#### CHAPTER-IV

### PRESENTATION OF PLAINT AND OTHER DOCUMENTS

1. *Presentation at the counter.*—All complaints, petitions, applications and documents shall be presented by the plaintiff petitioner, applicant defendant or respondent in person or by his duly authorised agent or by an advocate duly appointed by him for the purpose, at the filing counter. All such documents filed in Court shall be accompanied by an index in duplicate containing their details. The amount of Court fee affixed or paid on any such document shall also be indicated in the index.

Sufficient number of copies of the plaint, petition or application shall also be filed for service on the opposite party.

**2. Endorsement and Scrutiny of documents.**—(a) The officer in charge of the filing-counter shall endorse the date of receipt on the plaint, petition, application or proceedings and also on the duplicate copy of the index and return the same to the party. He shall enter the particulars of all such documents in the register of daily filing and thereafter cause it to be sent to the officer concerned for examination. If on scrutiny, the document is found in order, it shall be duly registered. Where a document is found to be defective, such document shall, after notice to the party filing the same, be placed before the Registrar. The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary not exceeding 10 days at a time and not exceeding 30 days in aggregate.

(b) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the registrar may for reason to be recorded in writing, decline to register the document.

**3. Service on the opposite party.**—(a) Where notice of an interlocutory application is ordered by the Court, a copy of the application, the affidavit in support thereof (and if so ordered by the Court, or other documents filed therewith), if any, shall be served along with the notice on the other part.

(b) The aforesaid copies shall show the date of presentation of the original and the name of the advocate, if any, of such party.

**4. Registration of proceedings admitted.**—On admission, complaints, petitions and applications shall be registered in the appropriate registers and their number entered thereon.

**5. Attestation of amendments.**—The attestation of any amendment under O. II, rules 6 and 7, O. VI, rules 16 and 17, O. VII, rule 11 and O. XXI, rule 17 of the Code shall, unless otherwise ordered by Court, be done by the Registrar.

The amendment of any plaint or other proceeding carried out under the orders of the Court shall unless otherwise directed by the Court also be attested by the Registrar. The party shall file amended true copies, which shall be checked by the Registry.

## CHAPTER-V

### VAKALATNAMA

**1. Execution and filing of Vakalatnama.**—An Advocate on his filing a Vakalatnama duly executed by a party shall be entitled to act as well as to plead for the party in the matter and to conduct and prosecute all proceedings that may be taken in respect of such matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review, execution and appeal in the High Court and to take all such other steps as he may be specifically authorised by the power of attorney.

**2. Endorsement on Vakalatnama.**—No Vakalatnama shall be accepted unless it contains the following under the signature of the Advocate :—

- (i) an endorsement in token of its acceptance with the date of acceptance; and
- (ii) the address for service of the Advocate;



**3. Notice of Determination of authority of Advocate.**—A party desiring to obtain an order for determination of the authority of his Advocate who has filed a Vakalatnama on his behalf in a suit or matter shall do so by application after first giving notice thereof to that Advocate, and the fact of such notice having been served shall be stated in the affidavit in support of such application.

**4. Notice of Discharge to a client.**—An Advocate in a suit or matter desiring to obtain an order for his discharge, shall first give notice of his intended application for discharge to his client and the fact of such notice having been served shall be stated in the application :

Provided that an Advocate may be discharged by consent of the Advocate and the party by letter addressed to the Registrar and signed by the Advocate and the party.

## CHAPTER-VI

### APPEARANCE BY DEFENDANT, WRITTEN STATEMENT, SET OFF AND COUNTER CLAIM

**1. Indefault of appearance by defendant to be posted on the next day.**—If on the day fixed for his appearance in the writ of summons the defendant does not appear and it is proved that the summons was duly served, the suit shall, whether the summons was issued for final disposal or not, be set down for final disposal on the next or some subsequent day.

**2. Procedure when defendant appears.**—If the defendant appears personally or by an advocate before or on the day fixed for his appearance in the writ of summons:—

(i) where the summons had been issued for final disposal, the suit shall be set down for final disposal on the next or any subsequent day;

(ii) where the summons is for appearance and for filing written statement, the defendant shall file the written statement on the date fixed for appearance. A copy of the written statement shall be served on the plaintiff and the written statement shall not be accepted unless it contains an endorsement of service signed by such party or his Advocate.

**3. Extension of time for filing written statement.**—Ordinarily not more than one extension of time shall be granted to the defendant for filing a written statement; provided that a second or any further extension may be granted only on an application made in writing setting forth sufficient grounds for such extension and supported, if so required, by an affidavit.

**4. Procedure where no written statement is filed by any defendant.**—If the defendant or all the defendants in a suit have failed to file his or their written statements within the time allowed under rules 2 and 3 or any time extended by order the suit shall be set down for final disposal on the next or subsequent short cause day. Should the defendant or one or more of several defendants then appear and show good cause for his or their default, he or they may be allowed to defend on payment to the plaintiff of such costs, if any as may be awarded and the suit may be transferred to long causes or may be postponed.

**5. Service of Copies of written statement and list of documents on the other side.**—No written statement or list of documents shall be filed without the leave of the Court unless a copy thereof has been previously served on each party or his advocate. Parties or their advocates served with such copies shall give a receipt therefor. Copies shall be authenticated by the signature or initials of the parties or their advocates on each page at the bottom of the left hand margin.

6. *Orders as to claims for set off.*—Where a defendant pleads a set-off under O.VIII, rule 6 of the Code, the Court on the application of the plaintiff made in that behalf may at any stage of the proceedings and after hearing the defendant make an order directing that the claim for set-off be tried separately or make such other order as may be just.

7. *Counter-claim by defendant.*—(a) A defendant in a suit, in addition to his right of pleading a set-off under O.VIII, rule 6 of the Code may set up by way of counter claim against the claims of the plaintiff any right or claim, whether such counter claim sounds in damages or not.

(b) Subject to the provisions of rule 10, such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the counter-claim.

8. *Counter-claim be specifically pleaded.*—Where any defendant seeks to rely upon any grounds as supporting the right of counter-claim he shall, in his written statement, state specifically that he does so by way of counter-claim

9. *Reply of Counter-claim.*—When a counter-claim is made in a written statement, plaintiff may deliver a reply to the counter-claim within three weeks or within such further time as the Registrar may for sufficient cause allow.

10. *Order on Counter claim.*—Where a defendant sets up a counter-claim, the Court on the application of the plaintiff made in that behalf at any stage of the proceedings and after hearing the defendant may make an order directing that the counter-claim be tried separately or make such other order as may be just

11. *Proceeding with the counter-claim where suit is stayed etc.*—Where in any case in which the defendant sets up a counter claim the suit of the plaintiff is stayed, discontinued or dismissed the counter-claim may nevertheless be proceeded with.

## CHAPTER-VII

### INTERLOCUTORY APPLICATIONS

1. *Form.*—Every interlocutory application shall be instituted in the suit or matter in which it is filed.

2. *Contents of applications.*—(i) Except where otherwise provided by these Rules or by any law for the time being in force, an interlocutory application:—

(a) shall contain only one prayer or one series of alternative prayers of the same kind ;

(b) shall not contain any argumentative matter;

(c) shall be supported by affidavit stating clearly the grounds and the facts on which the application is based:

Provided that an application under Section 5 of the Limitation Act which a party may file for condonation of delay in filing any petition or application shall contain:

(a) The date when the prescribed period expired without allowances;

(b) the allowances to which the applicant claims to be entitled;

(c) the date when the period expired after all the allowances to be made under clause (b) have been made.

(d) the number of days by which the filing of petition or application, as the case may be, is delayed after all allowances to be made under clause (b) have been made.

(iv) Copies of the application, affidavit and of such other documents annexed thereto as the Registrar may direct shall also be filed for being served on the opposite side :

Provided that whenever the opposite side is already represented by counsel on record, they shall be filed only after service on such counsel.

3. *Counter-Affidavits etc.*—(i) Unless otherwise ordered by the Court, counter-affidavit shall be filed not less than four days before the hearing.

(ii) Not more than one affidavit in rejoinder may be filed without the leave of the Court. Such affidavit, unless otherwise ordered by the Court, shall be filed not less than two days before the date of hearing. Such affidavit shall be confined strictly to matters of reply.

(iii) No counter-affidavit and no affidavit-in-rejoinder shall be filed unless a copy thereof and copies of annexures thereto, if any, have been previously served on each party or his advocate. Parties or their Advocates served with such copies shall give a receipt therefor. Copies shall be authenticated by the signature or initials of the parties or their advocates at the end of the copy.

(iv) Except by leave of the Court, no affidavit in support of an application, no counter-affidavit and no affidavit-in-rejoinder beyond those which are filed and copies of which with annexures thereto are served in time as aforesaid shall be used at the hearing, or allowed on taxation.

(v) Where any affidavit, counter-affidavit or affidavit-in-rejoinder is not filed or served as aforesaid, it shall be kept separately in the record of the case until leave of the court has been obtained under sub-rule (iv).

## CHAPTER-VIII

### COMMISSION

#### A. GENERAL

1. *Reference to C.P.C.*—The general law as to Commission and Letters of Request as contained in Sections 75 to 78 and Order XXVI of the Code of Civil Procedure, will apply and the Forms to be used are Nos. 7 or 8 of Appendix H of Schedule-I.

2. *Panel of Commissioners.*—(i) Ordinarily a panel of not more than four persons including a lady lawyer, if available, shall be appointed by the High Court in its Seat and similar number in each district as Commissioners from among whom Commissioners shall ordinarily be appointed.

(ii) *Registrar/District Judge to submit all applications with recommendation to the High Court.*—All vacancies which arise for appointment of such Commissioners will be circulated by the

Registrar or the District Judge, as the case may be, to the members of the concerned Bar and all applications received shall be submitted in original to the High Court with his recommendations, duly supported by reasons for recommending a particular person.

(iii) *Term for such appointment.*—Commissioners will normally be appointed to the panel for a period of two years or until further orders whichever may be earlier. The term may be renewed for a further period of two years, but after four years there will normally be no re-appointment.

3. *Deposit of Commission fees.*—(a) The Commissioner shall be paid such fees and in such manner as may be ordered by the Court.

(b) The court or the Registrar, as the case may be, may order that such amount as it or he considers proper, be deposited in Court in advance towards Commissioner's fee together with the costs of issue of the Commission within seven days of the grant of the Commission or letters of Request or within such further time as may be allowed. In default, the matter shall, unless otherwise ordered for reasons recorded in writing, be set down for final disposal in due course.

(c) If at any subsequent time the Court is satisfied that the deposit made under sub-rule (b) is not sufficient to cover the remuneration of the Commissioners, it may, after notice to the parties or their advocates, order that such further amount as it considers proper be deposited in Court within seven days from the date of such order or within such further time as the Court may allow. In default, the procedure prescribed in sub-rule (b) shall be followed.

4. Notwithstanding anything contained in this Chapter, Commissions and letters of request for examination of witnesses in foreign countries will be governed by the directions issued by the appropriate authorities from time to time.

## B. EXAMINATION *DE BENE ESSE*.

1. For the purpose of examining a witness *De Bene Esse* the party may apply to the Court either for his examination in Court or for the issue of a Commission under section 76 or under Order XXVI, rule 4 of the Code.

2. The Court may on an application under rule 1, after considering the nature of the case and the evidence to be adduced, pass an order directing the examination of a witness *De Bene Esse*.

3. If the examination of the witness is in Court, such examination shall be taken up after notice to the other party, and the deposition of the witness so examined shall be recorded as in the case of a witness at the final hearing of the suit.

4. Where a Commission is issued for the examination of witness *De Bene Esse* either within the local limits of the High Court or outside the limits, the Court shall adopt the procedure prescribed for the examination of a witness on commission under the Code.

## C. REFERENCE TO COMMISSIONER :

1. Unless otherwise ordered, an order referring a suit or matter to a Commissioner shall direct that his report be filed in Court within thirty days from the date of the order or within such time as the Court may allow and that the case be set down before the Court for hearing, fourteen days from the date of filing the report.

A copy of all orders referring a suit or matter to a Commissioner shall be sent by the Registrar to the Commissioner.

2. The party having the conduct of the reference shall obtain from the Commissioner an appointment for the hearing of the case, and shall serve notice thereof on the opposite party.

3. A statement of account shall be in the form of a debtor and creditor account and shall be verified by the affidavit of the accounting party or his agent. The items on each side of the account shall be numbered consecutively, and a balance shall be shown.

A statement of objection to an account shall specify the items to which objection is taken, by reference to their number in the account, or the date of the item and page of a particular book of account, or otherwise.

A statement of surcharge shall specify the amount with receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him.

A statement of objection or surcharge shall also state shortly and concisely the grounds of the objection or surcharge; and shall also state the balance if any, admitted or claimed to be due. The statements shall be verified by the affidavit of the party concerned.

Any party improperly objecting to an account or statement of facts shall be liable to pay the costs occasioned by the subsequent proof and also such costs for delaying the reference as the court may direct.

4. The proceedings shall, so far as possible, continue from day to day and every adjournment of the hearing shall be to a fixed day and hour. If the Commissioner is unable to appoint a fixed day or to attend at the hearing or any adjournment, he shall give notice of the further hearing to all parties. The Commissioner shall annex to his report a statement of the days and the number of hours of each day on which the case was heard, and of the number of adjournments and reasons for the same.

5. If any party fails to attend at the time appointed or at any adjournment, the Commissioner may proceed in the absence of such party, or if he is unable so to do, he may for reasons to be recorded in writing, adjourn the hearing, or return the record in the suit to the Court with a report of the circumstances which rendered him unable to proceed with the case.

6. If, upon the hearing, it appears to the Commissioner, that the directions of the Court should be taken upon any matter, he may adjourn the hearing and direct the party having the conduct of the proceedings to apply to the court for directions.

7. After the evidence has been duly taken and the parties have been heard, the Commissioner shall submit his report together with the entire record and a statement in the form of a diary of the proceedings before him. The report shall state wherever necessary:—

- (i) the contested item allowed or disallowed by the Commissioner ;
- (ii) the reasons for allowing or disallowing the above ;
- (iii) the amount found due ;
- (iv) the name of the party to whom it is due ; and
- (v) the name of the party by whom it is due.

8. The Commissioner shall give notice to the parties of the filing of his report; and any party to a suit or matter may apply to the Registrar for a copy thereof.

9. The Registrar shall enter all cases referred to a Commissioner in separate list to be called the "Reference List" with the date for filing the report set opposite thereto; and if the report is not filed within the period limited, he shall set down the case for hearing; and thereupon the Court may discharge the order of reference to the Commissioner, and proceed to hear and determine the case or may grant a further time for filing the report or may make such order with respect thereto, and as to costs, as to the Court may seem fit.

10. A party desirous of objecting to or varying a report shall, within fourteen days from the receipt of the notice of the filing of the report, or within such further time as may be allowed by the Court, file in Court and serve upon the opposite party a statement of his objections to the report in the form prescribed by rule 3 of this order, and may at the hearing apply to vary or discharge the report accordingly. No objection shall be heard, of which due notice has not been given without the leave of the Court.

11. At the hearing upon a report the Court may at once proceed to give judgment in the case, or make such order as it thinks fit.

12. The order of reference may be made conditional upon the payment into Court, within a specified time, by the party applying for the order, or by any party to the suit, of a sum sufficient for the remuneration of the Commissioner, or for the general costs of the reference.

13. In determining the amount of the remuneration to be allowed to a Commissioner, the Court may consider whether any un-necessary delay or expense has been caused by the failure of the Commissioner to comply with these rules, or otherwise through his act or default.

## CHAPTER-IX

### WITNESSES

1. *Summons to witnesses.*—(a) An application for calling witnesses before the Court or a Commissioner appointed to take evidence, shall set forth a list of the witnesses and state, in addition to the particulars required by rule 4 of Chapter XVI, whether they are required to give evidence as experts or otherwise or to produce any document, and, in the latter case, shall specify the date and description of the document so as to identify it.

(b) If the applicant desires to produce witnesses or any one of them under O. XVI, rule I-A of the Code, the fact shall be stated in the application.

(c) Upon the grant of process, the process fee, travelling expenses and subsistence allowance chargeable, of any, in respect thereof shall be calculated by the office forthwith and deposited by the party concerned within seven days.

2. *Re-attendance of witnesses on adjourned hearing.*—When the hearing is adjourned, re-attendance of the witnesses present may be secured by payment to them of travelling and subsistence allowances and by binding them over on the date fixed by the Court for re-attendance.

3. *Production of public document.*—(a) application for summons for production of public documents shall be supported by an affidavit stating—

(i) the document or documents the production of which is required;

(ii) the relevancy of the document or documents;



(iii) why the production of a certified copy of the same would not serve the purpose ; and

(iv) in cases where the production of a certified copy would serve the purpose, whether application was made to the proper officer for a certified copy and the result of such application.

(b) The Registrar shall not issue such summons unless he considers the production of the original necessary and is satisfied that the application for a certified copy has been duly made and has not been granted. The Registrar shall in every case record his reasons in writing.

(c) Nothing in this rule shall apply to an application under Order XIII rule 10 of the Code for production of the record of any suit for proceeding.

4. *Return of original public record after its production in evidence.*—When public records are produced and put in evidence in original, the Court unless it thinks it necessary to retain the original, shall direct a copy to be made at the expense of the applicant and shall return the original.

5. *Power of Court to summon public records suo motu.*—Nothing in rule 4 shall prevent the Court of its own motion from sending for public records or other documents in the custody of a public officer or Court if it thinks it necessary for the ends of justice. Costs for such summoning and of production of such records or documents shall be paid by such party as the Court directs.

## CHAPTER-X

### PROCEEDINGS AT THE HEARING OF SUITS AND UPTO AND INCLUSIVE OF DECREES

1. When, at the first or at any subsequent hearing of a suit, any party appearing in person in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, is examined by the Court, the substance of such examination shall be reduced to writing by the Judge and shall form part of the record.

2. *Evidence, how taken.*—(a) Upto the hearing of any suit or matter the evidence of each witness shall be taken down by or in the presence and under the superintendence of the Judge, ordinarily in the form of a narrative and such deposition will be signed by witness and by the Judge.

(b) A party to a suit or matter in which deposition of a witness has been taken down in shorthand or typed to the dictation of the Judge shall be entitled to be furnished on payment of prescribed fee with a typed copy of the transcript, provided that ordinarily a written application has been made at the commencement of the hearing to be so furnished with a copy.

3. *Any particular question and answer may be taken down.*—The court may, of its own motion or at the request of any party or his advocate, take down or cause to be taken down any particular question and answer, or any objection to any question.

4. *Numbering of witnesses and documents.*—Depositions of witnesses of both sides and documents admitted in evidence shall be numbered in such manner as the Court may direct.

5. If the Judge who has recorded evidence or caused it to be recorded in his presence, under these rules, dies or ceases to be attached to the Court before the conclusion of the suit, the Judge, before whom the suit is continued may, if he thinks fit, deal with the evidence so recorded as if it had been recorded by himself or in his presence.

6. *Witnesses not to be present in Court during hearing of the suit.*—Witnesses other than the parties shall not, unless otherwise ordered by the Court, be present during the examination of other witness in Court-room before their depositions have been recorded.

7. *Exhibits other than in English to be translated.*—Except by leave of the Court, no document not in English language, shall be read or received in evidence unless it is translated in English in accordance with the Rules.

8. *No compromise without leave of Court in suits by indigent persons.*—Where a plaintiff has been permitted to sue as indigent person, the suit shall not be compromised without leave of the Court.

9. *Written Judgment of two or more Judges how pronounced.*—(1) Judgments may be either oral or written.

(2) When the court delivers an oral judgment, it shall be taken down by the shorthand writer. A transcript shall then be prepared for correction by the Judge or Judges who delivered the judgment. A fair copy of the transcript so correct, shall be signed by the Judge or Judges and dated with the date of delivery and shall be the record of the judgment.

(3) When any suit or matter is heard by two or more Judges:—

(i) if they have agreed to a written judgment and signed it, one of them may pronounce the judgment in the absence of the other or others ;

(ii) if any one or more of them have written separate judgments, one of them may pronounce the judgments written and signed by the other or others in his or their absence.

10. Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the court to read out the whole judgment; but a copy of the whole judgment shall be made available to the parties or their counsel for perusal immediately after the judgment is pronounced.

11. *Settling of draft of decree.*—Where the Registrar considers it necessary that the draft of any decree or order should be settled in the presence of the parties or where the parties require it to be settled in their presence, the Registrar shall, by notice in writing, appoint a time for settling the same and the parties shall attend the appointment and produce the briefs and such other documents as may be necessary to enable the draft to be settled.

12. *Copies of decree to Collector in case of Pauper costs.*—The Registrar shall cause copies of decrees to be prepared without delay for communication to the Collector in cases in which pauper costs are recoverable by Government.

13. *Errors how rectified after decree sealed.*—After a decree or order has been sealed, any application to rectify any inaccuracy other than a clerical or arithmetical error and to make it in accord with the judgment, shall be made to the Judge who passed the decree or order, or in the event of his absence, to any other Judge, and the Judge may after notice to the parties, when he deems it necessary, amend the same so as to bring it in conformity with the judgment, or rectify such inaccuracy or error. Save as aforesaid no alteration or variation shall be made without a review of judgment and re-hearing under the provisions of section 114 and order XLVII of the Code.

## CHAPTER XI

### SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. *Formal Order Unnecessary for next friend to bring a suit.*—When a suit is brought on behalf of a minor, the next friend shall make an affidavit, to be presented with the plaint in the suit, that he has no interest directly or indirectly adverse to that of the minor, and that he is otherwise a fit and proper person to act as such next friend. The age of the minor shall also be stated. No formal appointment of the person instituting the suit as next friend need be made.

2. *Next friend to file address for service.*—(a) The next friend shall file along with the plaint a memorandum in writing stating his address for service.

(b) If the next friend fails to file his address for service as aforesaid or within such further time as the Registrar may allow, the plaint shall not be admitted.

3. *List of all likely guardians ad litem to be filed.*—(a) In suits where the defendant is a minor, the plaintiff shall file with the plaint a list of relatives and all other persons with correct addresses, who, *prima facie*, are most likely to be capable of acting as guardian for the minor defendant in the suit.

(b) A notice shall issue simultaneously to all such persons, single process fee being levied. Such persons shall be deemed to be unwilling to act as guardian *ad litem*, if, after service of notice they fail to appear on the date fixed.

(c) If the persons specified in the list filed under sub-rule (1) are unwilling to act as guardian *ad litem*, the Registrar may, if there be more defendants than one and their interests are not adverse to the minor, appoint one of such defendants who may be willing to act as guardian *ad litem*; or may appoint forthwith one of the officers of the Court as such guardian *ad litem*.

4. *Address for service of guardian ad litem.*—Every guardian *ad litem* of a defendant other than an officer of the Court shall, within seven days of the order of his appointment as such or within such further time as the Registrar may allow, file in Court a memorandum in writing stating his address for service. Failure on his part to do so may be deemed sufficient ground for removing him under rule 2 of Order XXXII of the Code.

5. *Application of rules 1 to 4 to persons of unsound mind and appeals and applications.*—The provisions contained in this Chapter so far as they may be applicable extend *mutatis mutandis* to persons adjudged to be of unsound mind and to persons who, though not so adjudged, are found by the Court, on enquiry, to be incapable of protecting their interests when suing or being sued by reason of unsoundness of mind or mental infirmity. These provisions shall apply to appeals and applications connected therewith.

## CHAPTER XII

### DATES AND CAUSE LISTS

1. *Cause Lists.*—(a) On such day in the week as may be fixed by him, the Registrar shall sit to fix dates in suits, miscellaneous and interlocutory applications and other matters pending on the original side.

(b) Subject to the orders of the Court, matters fixed for final disposal on any day of the week shall be entered in the list of that day according to the date of their registration provided that precedence be given to part-heard matters.

(c) The cause-list shall be prepared under the directions of the Registrar and signed by him.

(d) if there be more Judges than one on the Original Side, separate cause-list of the matters before each Judge shall be prepared in the manner aforesaid.

2. Ordinarily, suits will be tried on day-to-day basis consecutively on court working days. The parties and their witnesses must be ready for trial from the date fixed for final disposal under Rule 1 above.

## CHAPTER XIII

### AFFIDAVITS

1. *Proof of facts by affidavits.*—The Court may at any time, for sufficient reasons order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bonafide desires production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

2. *Evidence of affidavits.*—Upon an application evidence may be given by affidavit; but the Court may, at the instance of either party, order the attendance for cross-examination of the Deponent, and such attendance shall be in Court, unless the Deponent is exempted from personal appearance in Court or the Court otherwise directs.

3. *Title.*—Every affidavit shall be instituted in the cause, appeal or matter in which it is sworn.

4. *Form.*—Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation, if any, and the true place of abode of the Deponent.

5. *Contents of affidavits.*—Affidavit shall be confined to such facts as the Deponent is able of his own knowledge to prove, except or interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated.

6. *Interpretation of an affidavit.*—An affidavit requiring interpretation to the Deponent, unless interpreted by any of the persons mentioned in Rule 7, shall be interpreted by an interpreter nominated or approved by the Court, if made within the jurisdiction of this Court, and if made elsewhere, shall be interpreted by a competent person who shall certify that he has correctly interpreted the affidavit to the Deponent.

7. *Pardahnashin women.*—Where the Deponent is a Pardahnashin lady, unless she is known to the person attesting the affidavit, she shall be identified by a person to whom she is known and that person shall also prove the identification by a separate affidavit.

8. Regarding matters for which provisions have not been made under this Chapter or insufficient provisions have been made, the provisions of Chapter 8 of Rules and Orders of the High Court of Himachal Pradesh (Appellate Side) 1997, as applicable to making and filing of the affidavits in the High Court, shall be applicable to the affidavits to be filed under the provisions of this Chapter.

## CHAPTER XIV

## RECEIVERS

1. There shall be constituted a panel of advocates from among whom receivers shall ordinarily be appointed.

2. The strength of the panel shall be ten and may from time to time be varied at the discretion of the Chief Justice. Appointment to and removal from the panel shall be made by the Chief Justice.

3. *Application for appointment of Receiver to be appointed by affidavit.*—Every application for the appointment of a receiver shall be made in writing and shall be supported by an affidavit.

4. *Register of Receivers.*—On an order for the appointment of a receiver being drawn up and signed, an entry shall be made in a register to be kept for the purpose. A copy of the order of appointment shall be sent to the receiver.

5. Every person appointed to the panel shall, on such appointment, furnish security, for the sum of rupees five thousand in favour of the Registrar, High Court, in the form prescribed to cover his liability in respect of all receivership to which he may be appointed. He shall furnish one or other of the following kinds of security; (a) immovable property; (b) a fidelity bond by a guarantee society or insurance company duly approved by the Full Court; (c) cash; (d) a Government security; (e) a fixed deposit or a cash deposit in the post office savings bank; (f) post office cash certificates; (g) National Savings Certificates. On such security being furnished, the name of the person appointed shall be entered in the panel.

6. *Receiver to submit report.*—Unless otherwise ordered by the Court, the Receiver shall, within one week of the appointment, submit to the Court a detailed report regarding the property with an inventory of the property, account books, documents etc., taken charge by him.

7. *Directions for investment of monies in the hands of the receiver.*—Unless otherwise ordered by the Court, the Registrar shall, in consultation with the parties, give appropriate directions for the investment of all monies received by a receiver. Ordinarily such monies shall be deposited in a Scheduled Bank or invested in Government securities.

8. *Notice to surety of application effecting surety's risk.*—The surety or sureties mentioned in rule 4 shall be entitled to notice of any application to the Court, on the part of the receiver or any other party interested, relating to any property in the management or under the control of the receiver which may affect the risk undertaken by the surety or sureties under the security bond furnished by the receiver and the Court upon hearing the said surety or sureties may make such order as to his or their cost of appearance in such application as it may think fit.

9. *Powers of a receiver.*—In the absence of any order in that behalf every receiver of immovable property shall have all the powers specified in Order XL, rule I (a) of the Code, except that he shall not, without the leave of the Court:—

- (a) grant lease; or
- (b) bring suits, except suits for rent; or
- (c) institute an appeal in any Court (except from a decree in a rent suit) where the value of the appeal is over Rs.1,000/-; or

- (d) expend on the repairs of any property in any period of two years more than one-fourth of the net annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired could be let out when in fair state of repairs.

10. *Receiver's remuneration.*—The scale of remuneration of the Receiver shall, unless otherwise ordered by the Court in a particular case, be as under:—

- (1) on (a) Rents recovered;
  - (b) outstandings recovered except as provided in item (2) below; and
  - (c) Value realised on the sale of movable and immovable properties calculated on any one estate :—
    - (i) On First Rs. 10,000/- .. 5 p.c.
    - (ii) Above Rs. 10,000/- upto Rs. 20,000/- .. 3 p.c.
    - (iii) Above Rs. 20,000/- upto Rs. 50,000/- .. 2 p.c.
    - (iv) Above Rs. 50,000/- upto Rs. 1,00,000/- .. 1 p.c.
    - (v) Above Rs. 1,00,000/- .. 1/2 p.c.
- (2) On outstandings recovered from a Bank or from a public servant without filing a suit :—
  - (i) Upto Rs. 1,00,000/- .. 1 p.c.
  - (ii) On any further sum exceeding Rs. 1,00,000/- .. 1/2 p.c.
- (3) For taking charge of movable property which is not sold on the estimated value .. 1 p.c.
- (4) For taking custody of moneys .. 1 p.c.
- (5) For taking custody of Government securities of stocks, shares, debentures, debenture-stock or other securities which are not sold on the estimated value .. 1 p.c.
- (6) For any work, not provided for above, such remuneration as the Court on the application of the receiver shall think reasonable.

Whenever the properties are in charge of an official receiver the above fees shall be credited to Government revenue.

11. *Establishment and costs therefor to be detailed in the appointment order.*—The establishment, clerical or otherwise, required by a receiver, if any, and the cost thereof chargeable to the estate or property of which he is appointed receiver shall, as far as possible, be detailed in the order of appointment or in subsequent order.

12. *No charge for additional establishment allowed.*—Unless otherwise ordered no charge for establishment shall be allowed to the receiver.

13. *Receiver to file half-yearly accounts.* Every receiver shall, unless otherwise ordered, file his half yearly accounts in Court, the first of such accounts to be filed within one month after the expiration of six months from the date of his appointment, and every subsequent account within one month after the expiration of each succeeding period of six months, or in a case where the purpose for which the receiver was appointed has been carried out or completed before the expiry of six months from the date of appointment, within one month from the date of such carrying out or completion.

*Form of Affidavit.*—Every such account shall show the balance in hand and if so what portion thereof is required for the purposes of the estate, and how much may be paid into Court or invested, and shall be verified by an affidavit.



**14. Examining and vouching of accounts by Registrar.**—Every such account, before being submitted to the Court, shall be examined and verified by the Registrar, who may for this purpose require the attendance of the receiver or his explanation or his evidence upon oath or affirmation, or the production of any document by him and receive within such time as he may appoint and decide objections to the account and shall embody the result of his examination in a report.

**15. Appointment of date for passing accounts.**—*Notice thereof.*—After the Registrar shall have submitted his report to the Court under rule 14, he shall obtain a date from the Court for passing such accounts, on which date notice shall be given to the persons interested including the sureties and to the receiver.

**16. Objections to report to be filed.**—Objections, if any, to the report shall be filed in Court one week before the day fixed for the passing of the accounts or within such further time as may be allowed by the Court. They shall specify in a concise form the nature of the objections and shall be signed and verified.

**17. Passing of accounts by Court.**—Where no objections are filed, the Court shall, if otherwise satisfied, pass such accounts, where objections have been filed, the Court shall subject to rule 19 after hearing the objections make such order as it may think proper.

**18. Procedure of to hearing of objections.**—The Court may, from time to time, adjourn the hearing of any objections or may refer them to an officer of the Court or to any other person, with such directions as the Court may deem fit.

**19. Auditing of difficult and complicated accounts.** In any case where the accounts are difficult and complicated, the Court may order such accounts to be audited at the expense of the estate by a Chartered Accountant.

**20. Order as to payment of balance.**—The Court, on the passing of the Account, may make such order as to the payment of the balance, or any part thereof, either into Court or in such other manner as may seem proper.

**21. Consequence of Receiver's negligence to file accounts or pay the balance etc.**—Where any receiver neglects to file his accounts, or to pass the same or to pay the balance or any part thereof as ordered the matter shall be reported by the Registrar to Court and the Court may, from time to time, when the accounts of such receiver are produced to be examined and passed not only disallow, the remuneration therein claimed by such receiver, but also charge him with interest not exceeding nine percent per annum upon the balance, if any, so neglected to be paid by him during the time such balance shall appear to remain in the hands of such receiver.

**22. Consequence of default by receiver.**—Where any receiver fails to file any account or affidavit, or to make any payment, or commits any other default, the receiver or persons interested or any of them; may be required by notice to attend before the Court to show cause why such account or affidavit has not been filed or such payment made or any other proper proceeding taken and thereupon the Court may give such directions as may be proper, including the discharge of the receiver and appointment of another and also the payment of costs by the defaulter.

**23. Interim receiver.**—Unless otherwise ordered by the Court, the provisions of this Chapter shall apply *mutatis mutandis* to orders for appointment of interim receivers.

## CHAPTER XV

### SECURITY PROCEDURE

**1 Security Summons.**—(a) Subject to any directions given by the court, where security is ordered to be given to the satisfaction of the Registrar the party ordered to give security shall

take out a summons within 14 days of the date of the order and shall serve the same upon the opposite party.

(b) The summons shall state the name and address of each surety to be tendered and a full and sufficient description of the property to be given as security.

2. *Affidavit of justification.*—(a) Simultaneously, every person offering himself as a surety shall make and file an affidavit of justification touching the value of his property and the debts and liabilities to which it is subject and also a draft of the bond proposed to be given. Copies of affidavits and the draft bond will be served alongwith the summons on the opposite party.

(b) Affidavits of justification shall be deemed insufficient unless they state that each person justifying is worth the amount required over and above what will pay his just debts and over and above every other sum for which he is then surety.

3. *Time for inquiry.*—Unless time be extended by the Court, the Registrar shall allow or disallow the surety within sixty days of the date of the order requiring surety.

4. *Production of title deeds etc. and examination.*—(1) Every person offering himself as surety, shall produce before the Registrar all the title deeds, vouchers and other relevant and necessary documents on the day fixed for his examination. Such person may be examined by the Registrar on oath or solemn affirmation touching the value of his property, and the debts and liabilities to which it is subject. After being examined and allowed, he shall sign the requisite bond and shall deposit his title deeds, vouchers and such other documents as the Registrar may require :

Provided that in any case the Registrar may, on good cause shown, dispense with the deposit of some or all of the said document and may return the same to the surety with an endorsement as follows:—

To whom it may concern :

Take notice that the property to which this document relates stands charged for the payment of a sum of Rs. .... by a bond executed on..... day of ..... 19 ..... by..... in suit No..... of 19.... entitled ..... Vs ..... pending in the High Court of Himachal Pradesh.

(ii) The endorsement referred to in the proviso to sub-rule (i) shall be cancelled by the Registrar when the surety is on stands discharged.

5. *Property in respect of which surety may justify.*—The title deeds may relate to immovable property situate beyond the local limits of the ordinary jurisdiction of the court, but shall in all cases be in the name of the proposed surety. A surety may justify also in respect of movable property of which he can produce evidence satisfactory to the Registrar, such as deposit receipts, Government promissory notes or other evidence of title.

6. *More than two sureties irregular.*—A tender of notice of more than two sureties shall not be accepted except by order of the Court.

7. *Who may be present at the examination.*—Except with the specific permission of the Registrar, no person other than the party giving security, the sureties and their respective advocates, the party or parties, if any, or, advocates, shall be present at the examination of any surety by the Registrar.

8. *Who are not competent sureties.*—Unless the Court otherwise orders, an advocate practising within the limits of the jurisdiction of the court, a clerk of such advocate or an officer of the Court, shall not be accepted as surety.

9. *Security for costs.*—If a party is required to give security for costs, unless the court otherwise orders, the total sum in the bond shall not be less than one thousand rupees.

10. *Custody of securities and security bonds.*—All papers and records relating to the taking of security, including securities and security bonds, shall be kept by the Registrar in safe custody in his safe in the strong room after making an appropriate entry in a register to be maintained by him for the purpose.

## CHAPTER-XVI

### PROCESS ETC.

1. *Service of Notice.*—(a) Except where otherwise provided by these Rules, or ordered by the Court, all summonses, notices, orders, or other documents required to be given to or served on a party or person, who resides within the jurisdiction of this Court, shall be served on such party or person either personally or on his advocate on record.

(b) Service of any notice, order or other document upon a person, who resides outside the jurisdiction of this Court, but within the territory of India, may ordinarily be effected by posting a copy of the document required to be served in a pre-paid envelope registered for acknowledgment addressed to the party or his agent empowered to accept service at the place where the party or his agent resides or carries on business or personally works for gain.

(c) Notwithstanding anything hereinabove contained in rule 1 (b) the Registrar may direct in a particular case or class of cases, that the service shall be effected in the manner provided by the Code for service of summons.

(d) Unless the contrary is proved, a document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.

2. *Time for payment of process fee and consequence of non-payment.*—Process fees for the issue of summons, notice or other process as prescribed in appendix-IV and costs of advertisements shall be furnished to the Registrar :—

(a) In case where the returnable date fixed is less than four weeks, within three days of the order; and

(b) In other cases within seven days from the order directing such summons; or

(c) within such further time as may be allowed for the purpose by the Registrar.

If the plaintiff or applicant fails to take any step or where the plaintiff or applicant commits default in furnishing the process fee or, making such payment or it appears to the Registrar that he is not prosecuting the matter with due diligence, Registrar shall call upon him to explain his default and if no explanation is offered, or if the explanation offered appears to the Registrar to be insufficient, the Registrar may issue a summons calling upon the plaintiff or the applicant to show cause before the Court why the plaint or the application should not be dismissed.

3. *Power to dismiss for non-prosecution.*—Upon such summons being issued, the Court may, after hearing the plaintiff, dismiss the suit for non-prosecution or give such other direction thereon as justice of the case may require.

4. *Full address to be given of persons on whom process to be served.*—Persons, on whom processes are to be served or executed, shall be described therein fully, by a statement of the name, father's name and other particulars as will facilitate identification and service. In the case of service and execution of process in towns the name of the street, lane or section and the number of the house (if any) shall also be given.

5. *Returnable date of summons.*—Unless otherwise ordered every writ of summons shall be made returnable as follows :—

- (1) if the defendant or all the defendants reside within the jurisdiction of the Court, in four weeks from the date of the admission of the plaint; and
- (2) in all other cases, within such time as may be considered sufficient for the transmission, service and return of the summons.

6. *Expedition issue of processes.*—Process or service or execution shall be made ready and issued expeditiously.

7. *Process to be served after identification of party.*—The serving officer shall serve all processes entrusted to him after due enquiry as to the identity of the persons on whom or the house or property where, the same is to be served :

Provided that if it appears to the Registrar that sufficient information cannot be given as to the identity and place of residence of the person whom process is to be served or as to the house or property where process is to be served or if the Registrar is satisfied from the affidavit of the serving officer or upon his examination on oath (if necessary) that the person or the house or property or the place of residence of the person aforesaid could not be identified after due diligence and enquiry, he may ask the party concerned to supply an identifier.

8. *Endorsement of identifier on the original process.*—If the serving officer is not personally acquainted with the person to be served, he shall, whenever possible obtain on the original process the endorsement by signature or thumb-impression of a respectable person of the locality identifying such person or place of residence or the house or property on which the process is served.

9. *Procedure where defendant refuses to accept service or cannot be found.*—Where the person to be served, or his agent, refuses to sign the acknowledgement or where the serving officer, after using all due and reasonable diligence, cannot find that person and there is no agent empowered to accept service of the summons on his behalf, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which that person ordinarily resides or carries on, business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances, under which he did so, and the name and address of the person (if any) by whom the house was identified, and in whose presence the copy was affixed. He shall also obtain the signature of the person on the return, who identified the person or in whose presence the copy was affixed on the said house.

10. *Returns of service.*—(a) Every process serving officer shall immediately after completion of any duty connected with any process, record with his own hand upon the original process at the place of execution and in the presence of at least one respectable witness his report specifying the manner of execution or the causes which prevented execution. Thereafter, he shall swear or affirm to the correctness of that report before an officer of the Court, duly authorised in this behalf and file the same in Court together with the process.

(b) *Process serving officer* must invariably note the date, hour and exact place of service of each individual process.

(c) If the process is addressed to more than one person the report shall describe the manner of service on each person and also the sequence in which the processes are served on different persons.

**11. *Service by affixing to outer door.***—The serving officer shall make a affidavit as to the following matters:—

- (1) the number of times and the dates and hours at which he went to the house;
- (2) the attempt made by him to find the person to be served;
- (3) whether he had any and what reason to suppose that such person was within the house or in its neighbourhood, or endeavouring to evade service; and
- (4) whether any adult male member of the family of the person to be served was residing with him.

**12. *Notice where summons is affixed to outer door.***—If a summons to a defendant is affixed to the outer door of his house in the manner provided in rule 12, the serving officer shall affix thereto a notice that the person, so served, can, upon an application to the Court, obtain a copy of the plaint and shall in his return state that he has done so and shall return the plaint to the Court.

**13. *Inquiry as to sufficiency of service.***—The Registrar shall in all cases where the process has been returned and in which an appearance has not been entered on the day appointed therefor hold an inquiry as to the sufficiency of service of process.

Such inquiry may be adjourned, if necessary, from time to time. Affidavits and further affidavits may be received or evidence taken *viva voce* at such inquiry.

No matter shall be placed before the Court unless the Registrar is satisfied that the defendant of the opposite side has been duly served. Wherever a defendant has been so served, but does not appear on the date appointed and the Registrar, after holding an inquiry as aforesaid, is satisfied that the defendant or the opposite side has been duly served, he shall report the matter to the court and the Court shall pass such orders as it deems fit.

**14. *Fresh process not to issue until previous one returned.***—Unless otherwise ordered, a second or subsequent process shall not be issued until after the one previously issued has been returned.

**15. *Registrar to execute or to cause to be executed process.***—The Registrar and, subject to his directions, any other officer of the Court shall execute or cause to be executed through the officers of the Court all processes including all warrants or orders for the delivery, attachment or sale of property in execution, or for the arrest or custody of any person, which may be entrusted to the Registrar for execution. They shall return all warrants and orders within the time prescribed, with an endorsement specifying the manner of execution or the causes which prevented execution. Such warrants and orders shall be filed in the record. A process service register shall be kept in the prescribed form.

**16. *Noting of date on processes.***—The Registrar shall note on every process the date on which it was delivered to the process server.

17. *Service on the advocates of parties.*—Service of any process, notice, order or other document on the advocate of any party may be effected by delivering it to the advocate or by leaving it with a clerk in his employ at his place of business.

18. Except where the process, notice, order or other document has been served through the Registry, the party required to effect service shall file an affidavit of service along with such proof thereof as may be available stating the manner in which the service has been effected.

19. Where process, notice, order or other document has been served through another Court, the service may be proved by the deposition or affidavit of the serving officer made before the Court through which the service was effected.

## CHAPTER-XXI

### COURT DEPOSITS AND PAYMENTS

1. *Payment of money.*—(a) The Registrar and subject to his directions any other officer of the Court shall receive all monies paid into the Court and shall pay out all monies duly ordered to be paid out of Court.

(b) Money may be paid or deposited in Court by postal money order. In that case, the person making the payment shall send to the Registrar a statement containing full particulars regarding the intended payment or deposit.

2. *Notice of payment or deposit to judgment-creditor or Collector.*—(a) A person paying money into or depositing property, in the Court in part of full satisfaction of a decree or order shall give notice through the Court of such payment or deposit to the judgment-creditor.

(b) Where the decree directs payment of court-fees to Government under O. XXXIII, rule 10 of the Code, no order shall be made on the application for payment of such money or delivery of such property without giving notice thereof to the Collector at the expense of the applicant.

3. *Delivery of securities, jewellery or other valuables into Court.*—When jewellery or other valuables are brought into Court, three copies of a descriptive list thereof shall be presented and shall be checked and signed by the Registrar in the presence of the depositor. The jewellery or other valuables shall be placed in a box furnished with a lock and key to be provided by the depositor. A copy of the list shall be kept in the box and the box shall then be locked and sealed with the seal of the Court. One copy of the list shall be given to the depositor and the third copy of the said list and the key of the box shall be retained by the Registrar. The box shall thereafter be kept in safe custody by the Registrar or in such other custody as the Court may direct.

4. *Application for payment of money etc.*—Every application for payment of money or delivery of property deposited in Court, shall be instituted in the suit or matter and shall also show the number of the execution application, if any pending, showing the right and interest of the party applying and the amount claimed.

5. *Applications to be checked.*—Applications to make or receive payments shall be duly checked by reference to the record of the suit or matter before submission for orders to the Registrar.

6. *Payment by money order, bank draft, etc.*—On the application of the decree-holder or other person entitled to any money deposited in Court and not expended for the purpose for which it was deposited, if there is no objection to the payment of money on the ground of attachment or otherwise, the Registrar may order that the amount, after making all necessary and lawful



deductions, to be sent to the applicant at his risk -

- (i) by money order, or
- (ii) by bank draft by registered post acknowledgement due; or
- (iii) in any other manner specified by the applicant, which the Registrar approves:

Provided that before payment is ordered to be made under clause (ii) or (iii) the applicant shall submit a duly stamped receipt for the amount due in the form given below.

### FORM OF RECEIPT

Received the sum of Rs.....(Rupees .....  
.....only) from the High Court of Delhi bearing the amount deposited in the said Court in connection with.....

(Stamp)

(Signature of the payee)

Dated.....

7. *Written authority of client requisite for payment to Advocate.*—Unless otherwise ordered by the Court, no payment shall be made to an advocate on behalf of his client without special authorisation in that behalf by the client in favour of the advocate.

8. *Account books to be kept.*—The following account books shall be kept:—

- A. Book of receipts for money paid into court
- B. Process-fee receipt book
- C. Register of deposit receipts, viz. register of sums received in Court in connection with suits or judicial proceedings and deposited with Government (to be kept in duplicate).
- D. Register of deposit payments, viz. register of payments from sums received into Court in connection with suits or judicial proceedings and deposited with Government (to be kept in duplicate).
- E. Files of applications for refund of lapsed deposits and of statements of lapsed Civil Courts deposits.
- F. Register of attached property
- G. Register of money received on account of subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for immediate disbursement
- H. Register of payments on account of subsistence money of civil prisoners, expenses of witnesses and miscellaneous petty items required for immediate disbursement.
- I. Cash Book
- J. Ledger
- K. Bank or treasury pass book
- L. Bank or treasury cheque/voucher book
- M. Register of receipts and of withdrawal of property left in the custody of the Registrar.
- N. Such other registers as may be directed by the Chief Justice to be kept.

9. *Signing of cheques and checking of accounts.*—The Registrar or such other officer, as may be specifically authorised by the Chief Justice in that behalf, is authorised to sign cheques. He shall at least once a month call for the registers and accounts and satisfy himself that the entries have been carefully and properly made. When such inspection is made, he should note the fact in his own hand on the register or account inspected.

## CHAPTER-XVIII

## TAXATION OF COSTS

1. *Taxing officer.*—The Registrar, or such other officer as the Chief Justice may appoint for the purpose, shall be the Taxing Officer of the Court.

2. *Time for filing bill of costs.*—Each party shall within seven days from the date on which judgment is delivered or order is passed or within such further time as the Taxing Officer may allow, submit his bill of costs.

3. *Contents of the bill of costs.*—The bill of costs shall set out :

- (A) Process-fee spent,
- (B) expenses of witnesses,
- (C) advocates fee, and
- (D) such other amounts as may be allowable under the rules, or as may be ordered by the Court as costs.

4. *Notice for taxation.*—When a bill of costs has been lodged for taxation two day's notice or such further time not exceeding seven days in aggregate as the Taxing Officer may allow, shall be given to the opposite party :

Provided that no notice shall be necessary in any case when the defendant has not appeared in person or by his advocate or guardian.

5. *When expenses of witnesses may be included in costs.*—No expenses of witnesses other than those paid through the Court shall be included in the costs allowed.

6. *Taxation of costs.*—(a) Advocates fee shall be taxed on the basis of a certificate filed under rule 2, Chapter 5, but not exceeding the scale prescribed in the Schedule appended to this chapter. Other costs shall be taxed according to the charges necessarily and actually incurred. These charges shall include in addition to other costs allowable under the rules, the costs of printing pleadings etc. for the use of the Court, the fees paid at the Registration Office for searching and for obtaining copies of the necessary documents filed in Court, fees, if any, paid to the officers of the Court as prescribed by clause (d) of the said Schedule and the cost of preparation of process taxed according to the scale prescribed.

(b) Unless the Court expressly directs otherwise the following costs shall not be deemed to have been incurred necessarily within the meaning of sub-rule (1) and shall not be taxed—

- (i) court fee stamps on all applications dismissed or not allowed or not pressed;
- (ii) court-fee stamps on all unnecessary or defective application or applications to suit the convenience of a party such as for adjournment of hearing, for time to file written or other statement or to take some steps for showing cause in case of any default or omission, for withdrawing a claim or for amendment of any pleading or petition;
- (iii) expenses on affidavits improperly or unnecessarily filed;
- (iv) expenses of filing and proving unnecessary document or documents which the other party was not previously called upon to admit by notice or of exhibiting interrogatories unreasonably, vexatiously or at improper length;
- (v) process-fee for serving persons found by the Court to have been unnecessarily in placed or the suit against whom has been dismissed, withdrawn or not prosecuted;

(vi) charges incurred in connection with the attendance of unnecessary witnesses, and  
(vii) retaining fee to an advocate.

7. *When one advocate appears for different parties in the same matter.*—Where an advocate appears for different parties in the same suit or matter, only one set of fees shall be allowed.

8. *Advocates fee when the suits compromised before it is set down for evidence or hearing.*—Where a suit is compromised before it is set down for evidence or for hearing, the fees to be allowed to an advocate, shall subject to the terms of the compromise be one-third of the amount specified in the schedule to this chapter.

9. *Review of taxation only on notice to the opposite side.*—No application for review of taxation, unless the taxation was *ex-parte*, shall be made except on notice to the opposite side.

10. *No review of taxation of costs if bill of costs was not filed.*—Subject to any orders passed by the Court, if the bill of costs is not filed within time allowed under rule 2, the Bill will be prepared by the taxing officer, and no application for review of taxation shall be allowed unless made before the decree signed.

11. *What cost-allowed after taxation.*—The only cost which shall be allowed after taxation shall be the costs of execution or of transmission of the decree to another Court.

12. *Meaning of "proportionate Costs".*—Where "proportionate costs" or "costs in proportion" are allowed such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim.

13. *Application to Court for review of taxation.*—Any party, who may be dissatisfied with the decision of the Taxing Officer as to any item or part of any item may, not later than fourteen days from the date of the decision or within such further time as the Court may allow, apply to the Court for an order to review the taxation as to the said item or part of any item, and the Court may thereupon after notice to the other side, if necessary, make such order as to it may seem just, but the taxation of the Taxing Officer shall be final and conclusive as to all matters which shall not have been objected to in the manner aforesaid.

14. *Hearing of such application.*—Such application shall be heard and determined by the Court upon the evidence which shall have been brought in before the Taxing Officer, and no further evidence shall be received upon the hearing thereof, unless the Court shall otherwise direct.

## SCHEDULE

### TABLE OF FEES

A—In defended suits ;

#### (1) To Junior Advocate

(i) For drafting readings etc. including acting fee. 2-1/2% of the total value of the claim or Rs. 1500/- whichever is less.

First day Refresher

Rs. Rs.

(ii) For appearance at the hearing of the suit when assisting and not pleading himself. 400 200

	First day	Refresher
	Rs.	Rs.
(i) For appearance at the hearing of the suit and pleading himself.	600	300
(2) To senior Advocate for setting pleading etc. (if allowed)	1000	—
(3) To leading Advocate for appearance at the hearing of the suit.	800	400

*Note-1.*—At the hearing of a defended suit ordinarily the fees of not more than two advocates may be allowed.

*Note-2.*—The expression “junior advocate” means an advocate other than a senior Advocate.

#### *B. In undefended suits :*

One-third of the above scale.

C. In any interlocutory application or execution proceedings or for any matter other than that of appearing, acting or pleading in a suit, such fee as the Taxing officer may allow having regard to the nature and importance of the proceeding or matter :

Provided, however, that in no case the amount allowed shall exceed Rs. 500.

#### *D. Fees to officers of Court :*

- |  |        |
|--|--------|
| (1) Fees of interpreter for explaining at the house of a party or any place other than the Court House, pleadings and other documents, where not exceeding 20 folios. Where over 20 folios, for every 10 folios or part thereof. | 8.00   |
| (2) Fees for taking bonds and fees of commissioners for attesting affidavits or affirmations, at any place other than the Court's House.   | 2.50   |
| For the first affidavit, oath or affirmation or bond within the municipal limits of Shimla.  | 25.00  |
| For the first affidavit, oath or affirmation or bond, beyond such limits   | 50.00  |
| For every affidavit, oath or affirmation or bond taken at the same time and place after the first, in the same suit, appeal or matter.   | 100.00 |
| (3) Fees of commissioners, for attesting affidavits, oaths or affirmations at the Court House, for every affidavit, oath or affirmation :  | 10.00  |

### CHAPTER XIX

#### PROCEEDINGS IN EXECUTION

- 1. Interpretation.*—In this chapter the word ‘decree’ includes order.

#### APPLICATION FOR TRANSMISSION

*2. Transmission of decree for execution*—(a) An application for transmission of a decree to another Court for execution shall be in the form prescribed and shall specify the Court to which the transmission of the decree is sought and whether the decree has already been satisfied in part and if so, to what extent. The same shall be supported by an affidavit. It shall also be accompanied by a certified copy of the decree or an application for the same.

(b) The Registrar shall transmit by registered post, at the cost of the applicant the certified copy of the decree together with the other documents mentioned in Order XXI, rule 6 of the

Code to the Court to which the transmission is sought in accordance with the provisions of rules 4 and 5 of O. XXI of the Code.

## APPLICATION FOR EXECUTION

3. *Application under O. XXI, rule 15 to be supported by affidavit*.—An application under rule 15 of O. XXI of the Code shall be in the prescribed form and supported by an affidavit.

4. *Checking and admission of execution petition*.—Applications for execution shall ordinarily be checked in the Order in which they have been filed by reference to the Registrar of Civil Suits and all objections thereto, if any, shall be noted therein and then be submitted to the Registrar, for orders. All applications for execution, when admitted, shall be entered in the register of execution applications.

5. *Procedure in execution application under O. XXI, rule 15*.—When an application is made by one or more of several joint decree-holders, unless a written authority signed by the other decree-holders for the applicant to execute the decree and to receive the money or property recovered is filed in Court, the Court or the Registrar, may give notice of the order, if any, passed for the execution of the decree to all the decree holders who have not joined in the application and may also give notice of any application for payment or delivery to the applicant of any money or property recovered in execution,

6. *Procedure when cause not shown*.—Where execution is for arrest of a judgement debtor and the judgement-debtor does not appear on the day of hearing fixed under the notice issued or on such other day to which the hearing thereof is postponed, the notice and the affidavit of service thereof, shall be filed and the Registrar, shall thereafter, place the matter before a Judge in Chambers for orders.

7. *Registrar not to issue execution simultaneously against persons and property*.—Execution shall not issue against the property of a judgement-debtor at once with the issue of execution against his person. But a judgement-creditor desiring to proceed against both simultaneously shall apply to the Court and in case of such application being refused, shall not be allowed to include the costs thereof in his costs as against the debtor without the special order of the Court. But when a warrant for the arrest has not been executed, a warrant for attachment may, at the request of the judgement creditor, be issued.

8. *Application for appointment of receiver in execution of decree*.—An application for execution of a decree by the appointment of a receiver under section 51 and Order XI, rule 1 of the Code to release or otherwise deal with property under attachment shall be made to the Court, and such receiver shall, unless otherwise ordered, be subject to the rules of this Court, applicable to persons appointed as receivers of property in-suit.

## MODE OF EXECUTION

### Execution of documents

9. *Copies of draft to be filed*.—The decree holders shall file two copies of the draft referred to in Order XI, rule 34 (1) of the Code and two copies of the notice in the prescribed form together with the prescribed process fee for service thereof. One of the copies of the draft shall be served on the person directed to execute the documents in the manner prescribed for service of summons on the defendant to a suit.

10. *Execution of document under Order XXI, Rule 34(5)*.—Unless otherwise ordered by the Court, a document shall be executed or a negotiable instrument endorsed under Order, XXI, rule 34 (5) of the Code by the Registrar.

### Arrest

11. *Deposit with Warrant of arrest.*—With every application for warrant of arrest before or after judgement there shall be deposited with the Registrar a sum of Rs. 50/- for the intermediate subsistence of the judgement debtor, pursuant to Order XXI, rule 39 (1) to (4) of the Code.

### Attachment and sale

12. *Application of incumbrancer to be made a party to the suit or to join in the sale.*—An incumbrancer, not a party to the suit, may at any time before the sale apply to the Court to be made a party, or for leave to join in the sale; such order shall be made thereon in protection of his right and as to cost as the Court shall deem fit.

13. *Receipt of attached property to be given.*—A bailiff attaching movable property shall furnish to the judgement debtor or other person, from whose possession the movable property is attached, a receipt in the form of the list of the said property signed by the said bailiff and take an acknowledgement to that fact on the warrant of attachment.

14. *Deposit of cost for removal or maintenance of property.*—Before making any order for the attachment of live stock or other movable property, or at any time after any such order has been passed, the Court or the Registrar, may require the person at whose instance the order of attachment is sought or has been made to deposit in Court such sum of money as the Court or the Registrar may consider necessary:

- (a) for the removal of the property to the Court premises or other appointed place and its maintenance, guarding and custody till arrival thereat ;
- (b) for the maintenance, guarding and custody of the property at the Court premises or other appointed place till it is sold or otherwise disposed of land ;
- (c) for the maintenance, guarding and custody of the property at the place at which it was attached or elsewhere.

In case of failure to deposit such sum within the time prescribed by the Court or Registrar, the Court or Registrar may either refuse to issue or may cancel the order of attachment, as the case may be.

15. *Account to be rendered on demand.*—An account of the expenses actually incurred shall, on demand being made on or before the date of the sale, be furnished to the attaching creditor and to the person whose property was attached. After hearing objections to the account, if any, made within three days of its receipt by a party, the amount that the Registrar finds to be properly due, shall be deducted as first charge from the proceeds of the sale of the property and paid to the attaching creditor along with any balance of the deposit made by him.

16. *Restoration of attached property on payment of costs incurred.*—(a) If in consequence of the cancellation of the order of attachment or for any other reason the person whose property has been attached, becomes entitled to receive back the live stock or other movable property attached he shall be given a notice by the Registrar that he should take delivery of it within the time specified by the Registrar on payment by him of the charges, if any, found by the Court or the Registrar to have been properly incurred and which have not been defrayed or for the defrayal of which no money has been deposited by the attaching creditor.

(b) If he commits default in taking delivery of the property by failure to pay the requisite charges or otherwise, the Court may order that the property be sold by public auction and that after defraying the charges referred to in sub-rule (a), if any, and the expenses of the sale, the balance of the sale-proceeds be credited to his account.



### Sale of attached property

17. *Immediate sale of movable property.*—In the case of property to be sold under the proviso to rule 43 of order XXI of the Code, if such property is in the court premises in the custody of the Registrar, he may authorise an officer of the Court to sell the same by public auction and may give such directions as to the date and time and place of sale and the manner of publishing the same as the circumstances of the particular case admit.

18. *Contents of sale proclamation.*—In addition to the particulars specified in sub-rule (2) of rule 66 of order XXI of the Code, the sale proclamation shall contain a notice that only the right, title and interest of the judgment-debtor is to be sold. The title deeds or an abstract of the judgment-debtor's title, if available, will be open for inspection at the office of the Registrar.

19. *Appearance of judgment-debtor.*—(a) If the judgment-debtor appears before the Registrar pursuant to the notice issued under order XXI, rule 66 (2) of the Code, the Registrar, shall examine him on any matter effecting his title to the attached property. The judgment-creditor may also examine him on any matter relating thereto. If the judgment-debtor fails to attend, the Registrar shall proceed *ex-parte*.

(b) The Registrar may also exercise powers under Order XXI, Rule 66 (4). If any document are produced relating to the attached property by any person, the same shall be kept with the Registrar, and shall be subject to his directions both as to their custody pending the sale and their ultimate disposal, such directions being subject to appeal to the Court.

19. *Publication of proclamation.*—Whenever the sale of land or of a house or houses exceeding Rs.10,000/-in value of or movable property exceeding Rs. 10,000/-in value is ordered the Registrar shall, with the permission of the Court, advertise such sale in a local newspaper or newspapers.

20. *Copy of sale proclamation to be sent to Collector in case of sale of land.*—When any land or share of land is ordered to be sold in execution of a decree, the court shall send a copy of the proclamation of sale issued under Order XXI, rule 67 of the Code to the Collector concerned.

21. *Arrest or sale on holidays.*—No arrest shall be effected and no sale shall be held in execution on Sundays or during holidays or vacation of the Court except, by leave of the Court or the Registrar.

22. *Leave to bid and reserved price.*—(a) An application for leave to bid by the decree holder at the sale shall be supported by an affidavit giving reasons why the applicant should be permitted to bid.

(b) In cases in which the Registrar considers that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Registrar to give leave to bid at the sale only on condition that the applicant's bid shall not be less than the amount so fixed, which amount shall as far as practicable be, determined with reference to the market value of the property or of the lot or lots into which the property is divided for sale.

23. *Sale.*—On the day and the time and place appointed for the sale, the proclamation of sale shall be read out before the property is put up for sale.

24. *Postponement of sale for want of sufficient bidding.*—If there be no bid or the highest bid be below the reserved price (if any), or be deemed insufficient to the Registrar or other officer conducting the sale, he shall postpone the sale and record the reason for such postponement in the bidding paper.

25. *Postponment of sale otherwise than under rule 26.*—The Registrar or other officer, conducting the sale may for sufficient cause postpone the sale. The costs of a postponement rendered necessary by the absence of the Registrar or other officer conducting the sale shall be costs in the cause. The costs of a postponement made at the request of the party or by reasons of his conduct shall be borne by him.

26. *Bidding paper.*—The name of each bidder at the sale of property shall be noted on a paper to be called "The bidding paper", each bid shall be signed by the bidder and the amount of the bid shall be entered opposite his name. If there be no bid, the words "no bid" shall be written in the bidding paper opposite the property or as the case may be, the number of the lot. If the highest bid be deemed insufficient, the words "not sold" shall be written opposite the property or the number of the lot. If the property be sold, the highest bid shall be entered opposite the property or the number of the lot, wherein the full name and address of the bidder be taken and his signature obtained, and the purchaser shall write his full name opposite such entry and shall add his address and occupation. All notices thereafter served at the address so given shall be deemed to have been duly served on the purchaser.

27. *Agent to produce authority.*—A person purchasing for another as his duly authorized agent shall produce his authority in writing at the time bidding, and sign the bidding paper as such, giving the full name, address and occupation both of himself and his principal. All notices thereafter served at either of the addresses given shall be deemed to have been duly served.

28. *Declaration of purchase.*—If the highest bid be equal to or higher than the reserved price (if any), the Registrar or other officer conducting the sale shall make an entry in the bidding paper to the following effect :—

"I declare.....to have been the highest bidder for the purchase of the property above set forth (or of lot No.....) for the sum of Rs.....".

29. *Report of sale.*—Upon the completion of the sale the Registrar or other officer conducting the sale shall file in Court his report of the sale.

30. *Time for confirming sale.*—A sale of immovable property shall not be confirmed until after the expiration of 30 days from the date thereof.

## CHAPTER XX

### REPEAL AND SAVINGS

1. The Delhi High Court (Original Side Ist H. P. Amendment) Rules 1981 are hereby repealed save and except that anything done or any action taken under the repealed Rules shall be deemed to have been done under these Rules.

PART-II

Appendix-I

RULES FRAMED BY THE HIGH COURT OF HIMACHAL PRADESH REGULATING PROCEEDINGS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, IN EXERCISE OF POWERS CONFERRED BY SECTION 23 OF THE STATE OF HIMACHAL PRADESH ACT, 1970 READ WITH SECTION 129 OF CODE OF CIVIL PROCEDURE, 1908 (AS AMENDED UP TO DATE) AND IN EXERCISE OF ALL OTHER POWERS ENABLING THEM IN THIS BEHALF AND IN SUPERSESSION OF THE RULES CONTAINED IN CHAPTER-4F (b) OF VOLUME-V OF HIGH COURT RULES AND ORDERS, AS WERE APPLICABLE TO HIMACHAL PRADESH EITHER-TO AND IN MODIFICATION OF RULES FRAMED AND NOTIFIED ON JULY 23, 1974.

PART-A

GENERAL

1. (1) These rules may be called the "writ Jurisdiction (High Court of Himachal Pradesh) Rules, 1997."

(2) These rules shall come into force on the date of their publication in the official Gazette.

(3) These rules shall apply :—

(a) to all petitions under article 226 of the Constitution of India; and

(b) so far as may be, to all such petitions pending on the date mentioned in sub-rule (2).

2. *Definitions.*—(1) In these rules, unless the context otherwise requires :—

(a) "Chief Justice" means the Chief Justice of the High Court of Himachal Pradesh, and includes a Judge of that Court appointed under Article 223 of the Constitution of India to perform the duties of the Chief Justice.

(b) "Court" means the High Court of Himachal Pradesh and includes any Single Bench or Division Bench of the Court.

(c) "Registrar" shall include Registrar (Vigilance), District and Sessions Judge (Rules), Deputy Registrar or an Assistant Registrar as may be so designated by the Chief Justice for the purposes of these Rules.

(d) "Judge" means a Judge of the Court.

(e) "Pleading" shall mean a petition under Article 226 of the Constitution of India or a Written Statement or a return thereto and shall include such a replication or rejoinder as may be presented by leave of the Court.

(2) Unless the context otherwise requires, the General Clauses Act, 1897 (Act No. 10 of 1897), shall apply for the interpretation of these rules.

3. *Criminal writ petitions.*—A petition for the issuance of a Writ in the nature of habeas corpus shall be styled as "Criminal Writ Petition".

4. *Civil writ petition.*—A petition for the issuance of any other Writ, i.e., a Writ in the nature of Mandamus, prohibition, quo warrant or certiorari or any other appropriate writ, order or direction, shall be styled as "Civil writ Petition".

5. *Evidence.*—The Court may in order to discover or obtain proper proof of relevant facts, examine or direct the examination of any person, whether a party to the proceedings or not, either before it or by a Court Sub ordinate to it or on commission and may order the production of any document or thing at any time.

6. *Form of Writs etc.*—Every writ, notice, order warrant or other process shall be signed and dated by the Registrar and shall be sealed with the seal of the Court. The forms set out in the schedule to these rules with such variations as circumstances may require, shall be used in all cases where the same are appropriate.

## PART B—HABEAS CORPUS

\*1. *Application how made.*—An application for a writ of habeas corpus shall be presented in the manner as provided under Chapter 4, Part-B, Appellate Side Rules of High Court of Himachal Pradesh and shall be accompanied by an affidavit of the person restrained stating that the application is made at his instance and setting out the nature and circumstances of the restraint :

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person, which shall also state the reason why the person restrained is unable to make the affidavit himself ; and :

Provided further that all communications addressed to the High Court by a person in the custody of a public officer complaining of his detention or the conditions of his detention, whether supported by affidavit or not, shall be laid before the court for orders as applications under this rule.

2. (i) *Simultaneous applications.*—The applicant shall also state both in the application and affidavit whether a more or less similar application has been made to the Supreme Court and if so shall append thereto a copy of the application and a copy of the orders, if any, passed by the Supreme Court.

(ii) *Stay pending decision by Supreme Court.*—In case any simultaneous application has been made to the Supreme Court, the hearing of the application to the High Court will ordinarily be adjourned pending the decision of the Supreme Court in the matter.

3. *Bench.*—The Bench for hearing an application for a writ of habeas corpus shall be as laid down clause (ii) of Rule-3 of Chapter 2 of Rules and Orders of the High Court of Himachal Pradesh (Appellate Side).

4. *Rule NISI.*—If the Court is of the opinion that a *prima facie* case for granting the application is made out, a rule nisi shall be issued calling upon the person or persons against whom the order sought, to appear on a day to be named therein to show cause why such orders should not be made absolute and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law :

Provided however that the Court may in any particular case order that the production of the body of the person restrained may be dispensed with.

5. *Copy for respondent(s).*—If the Court grants a rule, the applicant shall, unless the admitting Bench orders otherwise, file to typed copies of the application, with copies of enclosures, for the use of the Court and an additional typed copy or copies, as the case may be of the application for being supplied to the person(s) or authority upon whom the writ is to be served.

6. *Service of Summons.*—The summons or notice of rule aforesaid shall be served on the persons against whom the issue of the writ is sought and on such other person as the Court or Judge may direct, and unless the Court or Judge otherwise directs, there shall be at least eight clear days between the service of the summons or notice and the date named therein for the hearing of the application.

7. *Search warrants.*—(i) If the application for a writ of habeas corpus alleges that the person is confined under such circumstances that the confinement amounts to an offence, the Court may, at the time of issuing a rule nisi also issue a search warrant, and the person to whom the warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately brought before the Court, which shall make such order as in the circumstances of the case may be seen to be proper.

(ii) The provisions of section 43, 75, 77, 79, 82, 83 and 84 of the Code of Criminal procedure, shall, so far as may be, apply to all such warrant issued under clause (i) of this rule.

(iii) If the Court issuing a search warrant under clause (i) of this rule has reasons to believe that the person to whom the warrant has been directed may not be able to identify the person confined, the Court may order a person named in the warrant to accompany the person to whom the warrant is directed, to assist him in the execution of the warrant.

8. The writ or the warrant shall along with a copy of application and a copy of the order be served by the Bailiff of the Court or by such other person as may be appointed by the Judge. Where the application is by or on behalf of a security prisoner, the writ will be served on the Government and not on the officer detaining the prisoner.

9. For the purposes of this rule a security prisoner is a person detained by the order of the Central Government or the State Government, under Section 3 of the Preventive Detention Act, 1950 (No. IV of the 1950) or under the Punjab Security of the State Act, 1953 (Punjab Act No. XII of 1953).

10. *Record evidence.*—The Court, may, if necessary, in disposing of such rule, take evidence or direct a Court of Session or a Magistrate to take evidence.

11. *Orders.*—On the returnable day of such rule or on any day to which the hearing thereof may be adjourned if no cause is shown or if cause is shown and disallowed, the Court shall pass an order that the person or persons, improperly detained shall be set at liberty. If the cause is allowed, the rule shall be discharge.

12. *Release order returnable immediately.*—Where a person ordered to be set at liberty under the foregoing rule is not present in court, an order for his release shall be issued forthwith to the authority or person restraining him. This order shall be made returnable, duly executed, immediately after service on the said authority or person, to the court indicated in the order of release.

13. *Release order how served.*—The order of release shall be served personally if possible, upon the person to whom it is directed; or if not possible, or if the order be directed to a gaoler or other public official, by leaving it with a servant or agent of the person to whom the order is directed at the place where the prisoner is confined or restrained.

14. *Release order sufficient warrant to gaoler etc.*—The order for release made by the Court, or the Judge, shall be sufficient warrant to any gaoler, public official or other persons for the release of the person under restraint.

14. *Control and direction over custody of prisoner.*—Upon the return and the production of the party on whose behalf the rule was issued, the custody of the prisoner shall be under the control and direction of the Court until the disposal of the rule. Pending the hearing, the Court may admit the prisoner to bail or remand him to the prison where he is in custody.

15. *Costs.*—In disposing of any such rule, the Court may in its discretion make such order for costs as it may consider just.

16. *Forms.*—The forms of warrants Nos. 1 and 2 in the Appendix to these rules shall be used in these proceedings.

#### APPENDIX (See Rule 16)

#### FORM OF WARRANT NO. 1 (See Rule 4) HIGH COURT OF HIMACHAL PRADESH

To the office in charge of (name of jail or lunatic asylum or other place, where the person is detained in custody) or to (name of person).

You are hereby required to have the body of B. C. now a prisoner in your custody (or now in your custody) before the High Court, on the day..... of next, by..... of the clock in the forenoon of the same day to be dealt with according to law and you shall then and there abide by such order as shall in that behalf be made by the said Court (if the prisoner is detained in public custody) add and unless the said B. C. shall then and there, by the said Court, be ordered to be released, by you shall, after the said Court shall have dispensed with his further attendance cause him to be conveyed, under safe and sure custody, back to the said (Jail or asylum or other place of custody).

Given under my hand and the seal of the High Court of Himachal Pradesh, this..... day of..... 19.....

Deputy Registrar.

#### FORM OF SEARCH WARRANT NO. 2 (See Rule 7)

#### HIGH COURT OF HIMACHAL PRADESH

To

(The name and designation of the person to whom the warrant is directed).

Whereas information has been laid before this Court that (Give the name and description of the person alleged to be illegally detained) is being illegally detained in (describe the house or place where the person illegally detained).

This is to authorise and require you, with the assistance of (give the description of the person authorised to accompany the person to whom the warrant is directed) to search for the aforesaid (give the name and description of the person illegally detained) in the (describe the place to which the search is to be confined) and, if found, to produce him forthwith before this Court to be dealt with according to law.

Given under my hand and the seal of the High Court of Himachal Pradesh, the..... day of..... 19.....

Deputy Registrar.

## PART C

## CIVIL WRITS

## (MANDAMUS, PROHIBITION, CERTIORARI, QUO-WARRANTO AND OTHER DIRECTIONS OR ORDERS)

1. *Petition how made.*—Every petition for the issue of any direction, order or writ in the nature of Mandamus, Prohibition, Quo Warrant or Certiorari, mentioned in Article 226 of the Constitution of India, shall be in writing and shall set out the names and description of the petitioner(s) and respondent(s). The petition shall set out concisely in numbered paragraphs the facts in a chronological order as far as possible upon which the petitioner relies and the grounds on which the Court is asked to issue a direction, order or writ and shall conclude with a prayer stating clearly, so far as the circumstances permit, the exact nature of the relief sought. The grounds shall not refer to any facts not set out in the preceding paragraphs of the petition. The petition shall be accompanied by an affidavit (or affidavits) verifying the facts stated therein by reference to the numbers of the paragraphs of the petition containing the facts. The affidavit shall be in the form prescribed in the Schedule to these rules. All corrections and alterations in the petition shall be initialled by the petitioner or his counsel, and in the case of an affidavit by the deponent and by the Oath Commissioner before whom such affidavit is sworn. The Oath Commissioner shall also at the time of administering oath on the affidavit, initial each page of the writ petition and also any corrections and alterations in the writ petition. The petition shall be lodged in the Registry accompanied by at least two copies of the petition, the affidavit and the documents (if any) annexed to the petition. The petition shall state whether the petitioner has moved the Supreme Court for a similar relief and, if so copies of the said petition to the Supreme Court and the Order, if any, made thereon shall also be filed.

1. Every Writ petition shall be accompanied by a list of documents in the form as prescribed for Civil Suits and each document which has been marked as Annexure to the Writ Petition shall be duly entered in such list. The date of document and its purport shall be specifically mentioned therein.

2. *Service of motion where Government is a party.*—Where the Government or an officer or department of the Government or a Court or a Tribunal, Board, Commission or any other body appointed by the Government is the respondent in the petition, the petitioner shall, before presenting the petition, serve notice of motion upon the Advocate General or standing Counsel, if he is authorised to receive notice on behalf of such respondent, along with as many copies of the petition, affidavit and other papers accompanying it as may be equal to the number of parties to be represented by the Advocate General or the Standing Counsel as the case may be and *one extra copies* for the use of the Advocate General or the Standing Counsel naming therein the day for the making of the motion. The petition shall indicate that such notice of the motion has been served. There shall be at least 7 clear days between the service of notice of motion and the day named therein for the making of the motion except where the matter is one of urgency and the permission of the Court is obtained for making such motion earlier.

3. Where objection is taken to any judgment or order of a Court or an officer thereof the petition shall be accompanied by a copy of such judgment or order and where there has been an appeal or revision from such judgment or order also by a copy of the judgment or order of the higher Court.

4. *Application how made, where interim relief is sought.*—Where *ad interim* relief is sought, a separate application shall be made for the purpose. Such application need not be supported by another affidavit unless it is based on facts which are not stated in the writ petition. No prayer



for the grant of *ad interim* relief will ordinarily be entertained unless a separate application is made in this behalf.

5. (i) All petitions under Article 226 of the Constitution of India which are accompanied by an application *ad interim* order shall be made on motion after notice to the parties affected thereby of such motion and petition and applicable.

(ii) *Manner of service of notice.*—Except as provided in rule the notice referred to above shall be served personally or through registered post, acknowledgement due, on the parties affected not less than seven clear days before the day the petition is filed; provided that where the matter is one of urgency and the permission of the Court is one of urgency and the permission of the Court is obtained such motion may be made earlier. The notice shall be accompanied by a copy of the writ petition, affidavit and other papers accompanying it and a copy of the stay application and shall also contain the time and place of moving the petition and application.

(iii) *Endorsement.*—The writ petition shall contain an endorsement that the notice referred to in sub-rule (ii) above has been duly served.

6. *Fresh notice of intention to move the petition.*—If the petition and the application referred to in the rules above are not made on the date intimated to the opposite party or parties, it shall be incumbent on the petitioner to serve a fresh notice of his intention to move the petition and application in the manner stated in the rules above.

7. *Procedure for filing application for ad-interim relief after filing of the writ.*—(i) Where an application for *ad interim* relief is made after the filing of the writ petition, it shall be made after notice of motion to the parties affected thereby and rules, 2, 5(ii) and (i) and 6 will apply to such an application so far as practicable.

(ii) Where the delay caused by the notice is likely to entail serious hardship an application may be made for *ad interim ex parte* relief duly supported by an affidavit and the Court, if satisfied that the delay caused by notice would entail serious hardship, may make an order *ex parte* upon such term as to costs or otherwise and subject to such undertaking, if any, as the Court may think just and proper.

8. *Rule nisi.*—The petition shall be posted before the Court for preliminary hearing and orders as to the issue of notice to the respondent(s). Upon the hearing, the Court if satisfied that no case has been made out for its interference may dismiss the petition, and if not so satisfied shall direct a rule nisi to be issued to the respondent(s) calling upon him to show cause why the order sought should not be made, and shall adjourn the hearing for the respondent(s) to appear and be heard.

9. (i) Upon making the order for the rule nisi, the Court may, if it thinks fit either *suo motu* or upon application made, grant *ex parte* such *ad interim* relief to the petitioner as the justice of the case may require, upon such terms, if any, as it may consider just and proper.

(ii) *Notice of ex-parte order to respondent.*—Notice of every such *ex-parte* order shall be given to the party affected thereby and, unless the Court has appointed a day for the return of the said notice or otherwise directs, the Registrar shall fix a date for the return of the said notice and the application for interim relief shall be posted before the Court for final orders on the date so fixed.

10. *Copies of the petition as well as application for ad-interim relief to respondent.*—(i) For the purpose of the issue of a rule nisi in the writ petition or for the purpose of notice of an application for an *ad interim* order, the petitioner shall file within 10 days' additional typed

copies of the petition, the affidavit(s) in support thereof, the other accompanying documents and where necessary a copy or copies of the application for an *ad interim* order for being supplied to the respondent(s) except where the requisite copy or copies have already been supplied under rule 2 or rule 5.

(ii) *Service of the Rule-nisi together with copy of an ad-interim order on respondent(s).*—Where copies are supplied by the petitioner under sub-rule (1) the rule nisi together with such copies along with a copy or copies of an *ad interim* order, if any, shall be served on the respondent(s) not less than 28 days before the date fixed for hearing (tentative) unless otherwise ordered by the Court.

(iii) *Vacation of ex-parte stay order.*—Provided that when the copies are not supplied by the petitioner as required by sub-rule (i), the case shall be listed in Court for orders.

Notwithstanding anything contained in these Rules, where in these proceedings, any party against whom an ad-interim injunction or stay order in any manner has been made *ex parte*, without notice to it, applies for vacation of such order, after, furnishing a copy of such application to the party who has obtained *ex parte* injunction or stay order, such application shall be laid before the Court for orders on the next day when it is presented and if the next day happens to be a closed holiday or a closed day for the Court, on the next following day when the Court reopens.

11. *Affidavit in opposition.*—(i) Affidavits in opposition with two copies thereof may be filed in the Registry not less than 15 days before the date appointed for the hearing (tentative) and affidavits in rejoinder thereto with two copies thereof may be filed not later than 7 days before such date unless otherwise ordered by the Court. Where reference has been made to a document in an affidavit in oppositions rejoinder, as the case may be, the document or relevant extract thereof shall be annexed thereto and duly entered in a list of documents in the form prescribed for Civil Suits. The date and purport of each document shall be specifically mentioned in such list. The affidavit in opposition and the affidavit in rejoinder shall be in the form prescribed in the schedule to these rules. Copies of affidavits in opposition or rejoinder shall be served on the opposite party or parties and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties.

(ii) In case the affidavits in opposition as required under sub-rule (i) are not filed within the period specified, the case shall be listed in Court for orders.

12. *Recording Evidence.*—An questions arising for determination shall be decided ordinarily upon affidavits but if the Court of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper.

13. *Miscellaneous application.*—When any party to a writ petition wishes to file a miscellaneous application that party shall supply a copy of the application in advance to the opposite party or his counsel before it is filed and an endorsement to that effect shall be made on the application. In case the opposite party or his counsel is not available and the copy can not be supplied, a note to that effect shall be made on the application.

14. *Taxation of costs.*—The costs of all petitions, applications and orders where such costs have not been assessed by the court, shall be taxed by the Registry as follows :—

#### Expenses incurred for

- (i) Drafting of petitions and applications: Rs.150/-to 500/-
- (ii) Stamps on the petitions

(iii) Stamps on applications, process fee, power of attorney etc.	} As may be leviable and affixed.
(iv) Attestation fee of affidavits.	
(v) Counsel's fee	
	Rs.100/-

and in case where certificate of fees is filed, the fee paid/received by the counsel or Rs. 500/- whichever is less.

In cases where the counsel fee is assessed by the court in the judgment or order, such fees should be included.

15. *Order.*—Any order passed by the Court under Article 226 of the Constitution of India shall be communicated for compliance to such person or persons as may be necessary within 15 days of the passing of that order but it shall not absolve such person or persons from complying with the order announced in open Court after notice in the cause list or otherwise.

16. *Application for Execution of order how made.*—(i) Any party to a proceeding under Art. 226 of the Constitution of India desiring to obtain execution of any order passed under Art. 226 of the Constitution of India, including any order as to costs, shall apply to the court by a stamped application which shall be supported by an affidavit of the applicant regarding the non-satisfaction of the order and shall also be accompanied by a certified copy of the order.

(ii) Every application made under the above sub-rule shall be heard and disposed of by the Registrar.

(iii) *Recovery of amount/costs.*—The Registrar, upon receipt of the application, shall direct the party against whom the amount/costs are awarded to deposit the amount in the Court within such time as he deems fit and upon the failure of the party to deposit the amount within the prescribed period, the Registrar shall order issue of a certificate for the recovery of the costs and may also include the costs of the proceedings before him.

(iv) *Certificate for recovery of costs.*—The certificate shall be issued under the signatures of the Registrar and seal of the Court and shall be executable as a decree of the Civil Court.

(v) *Execution of Certificate.*—The certificate shall be executable by the District Judge of the Division in which the party from whom the amount/costs are to be recovered actually resides or carries on business or works for gain or has moveable or immoveable property.

(vi) The Court to which the certificate is issued shall execute it as a decree received on transfer for execution from another court.

(vii) *Form of certificate.*—The form of certificate shall be as prescribed in these Rules.

(viii) *Costs.*—In the absence of any special provision in the Judgment, such costs shall be deposited in, and withdrawn from, the Civil Court Deposit of the Court in the same manner as in the case of ordinary executions.

## SCHEDULE

1. ....son of .....age .....  
 .....occupation.....resident of .....  
 or (in case of a Government servant filing the affidavit in official capacity), I,.....

..... presently posted as ..... at ..... do hereby state on oath/  
solemn affirmation that I have read the petition/reply/rejoinder/the petition/reply/rejoinder, has  
been read over and explained to me and that the contents of paras .....  
to ..... thereof are true to my personal knowledge and those of paras  
..... to ..... are based upon information received by me which I believe  
to be true.

I, solemnly swear/affirm that this affidavit is true, no part of this is false and nothing material  
has been concealed therefrom.

Verified at ..... this day of ..... the ..... 199 .

DEPONENT

### SCHEDULE

(Certificate of non-satisfaction of costs under Rule 16)

Miscellaneous Petition No ..... of 19 .....

Whereas the petitioner/respondent in the above case has applied to this Court for recovery of  
Rs. .... as .....  
from respondent/petitioner and the latter has failed to deposit the amount of Rs. ....  
payable to the petitioner/respondent;

And whereas this Court has ordered the issuance of a non-satisfaction certificate;

It is hereby certified that the petitioner/respondent is entitled to recover the amount of  
Rs. .... from ..... respondent/  
petitioner.

Given under my hand and the seal of the High Court at Shimla this .....  
day of ..... 19 .....

By order of the High Court

Deputy Registrar (Judicial).

Forwarded to the District Judge at ..... for necessary action.

CH 7-B, CH 13-R.

NOTICE PENDING ADMISSION

FORM NO. I

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA-1.

(EXTRA-ORDINARY CIVIL ORIGINAL JURISDICTION)

Civil Writ Petition No. ....  
..... Petitioner.

*Versus*

Respondent (s)

To

Whereas the petitioner above named has presented a petition under Articles 226 and 227 of the Constitution of India (copy enclosed) for issuing a writ, order or direction to the Respondents AND whereas the said petition when came up for motion hearing on..... this Court DOTH ORDER THAT a notice of admission be issued to Respondents. Notice is hereby given to you that the case will be laid before the Court on.....for admission at 10 A.M. or on any other subsequent date at the same time.

2. Further take notice that the stay matter in C.M.P. No.....has also been fixed for final orders on.....at 10 A.M. and the case will be laid before the Court on that day or on any other subsequent day.

3. You are hereby informed to appear before this Court on the initial date fixed and/or the subsequent day, as the case may be, personally or through a duly authorised Advocate for this Court to show cause against the admission of the writ petition, failing which the matter will be decided in your absence.

Given under my hand and the seal of the High Court of Himachal Pradesh, Shimla, this the .....day of .....198 .

Seal.

By order etc.,

*Superintendent (Judicial),  
High Court of Himachal Pradesh, Shimla.*

Notice of.....after admission and issue of Rule *Ni Si* (Ch. 7-B, Ch 13-C)

FORM NO. II

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Writ Petition No.....

*Petitioner.**Versus**Respondents.*

To

WHEREAS the above-mentioned Civil Writ Petition under Articles 226/227 of the Constitution of India (copy enclosed) filed by the counsel for the petitioner having been presented in this court by the petitioner through the counsel..... Advocate, Shimla admitted on..... for hearing. Therefore notice is hereby given to you that the petition is set down for Tentative Hearing in this Court on..... and that if you wish to urge anything in reply to the petition or the rule *nisi* issued against you, you are at liberty to do so within 28 days of the service of this notice by filing your written statement in this court whether in person or through an Advocate duly instructed and a copy of your written statement be supplied to the counsel for the petitioner within the aforesaid period.

If you do not file written statement on or before the aforesaid date, it will be presumed that you have none to file and the case will be listed for hearing before an Hon'ble Judge, without the written statement.

Superintendent (Judicial).

Given under my hand and the seal of the Court this..... day of ..... 198 .

Note.—The Stay matter in Civil Miscellaneous Petition No..... (copy enclosed) is also fixed for actual hearing on.....

Superintendent (Judicial).

FORM NO. III

# HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Writ Petition No..... of 199 .

CIVIL WRIT PETITION UNDER ARTICLES  
226/227 OF THE CONSTITUTION OF INDIA

For the petitioner (s) .

For the respondent (s)

WHEREAS the petition mentioned above under Articles 226/227 of the Constitution of India having been filed before the High Court of Himachal Pradesh, Shimla came up for hearing/ disposal on the..... day of..... 199 and whereas upon hearing Sh..... Advocate(s) for the petitioner(s) in support of the petition Sh..... for the respondent(s); in opposition thereto;  
THIS COURT.

THIS COURT FURTHER LASTLY DOETH ORDER THAT THIS ORDER BE PUNCTUALLY OBSERVED, OBEYED AND CARRIED INTO EXECUTION BY ALL CONCERNED.

WITNESS THE HON'BLE MR. JUSTICE  
CHIEF JUSTICE, HIGH COURT OF HIMACHAL PRADESH, SHIMLA THIS.....  
.....DAY OF.....199.

Superintendent (Judicial)

Deputy Registrar (Judicial)

Endst.No.C.W.P.....of 199

Dated .....

## APPENDIX-II

### RULES OF PROCEDURE AND GUIDANCE IN THE MATTER OF TRIAL OF ELECTION PETITIONS UNDER PART VI OF THE REPRESENTATION OF THE PEOPLE ACT, 1951, AS AMENDED

1. *Definitions.*—Unless the context otherwise requires, the following words and expressions, when used in this Chapter, have the meaning assigned to them in these rules:—

- (i) "Act" means the Representation of the People Act, 1951, as amended from time to time.
- (ii) "Advocate incharge" means the Advocate through whom the petition has been filed other than the Senior Advocate, if any, instructed by him.
- (iii) "Candidate" means a person, who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when with the election in prospect he began to hold himself out as a prospective candidate.
- (iv) "Chief Justice" means the Chief Justice of High Court of Himachal Pradesh.
- (v) "Designated Judge" means any Judge of High Court assigned by the Chief Justice under section 80-A (2) of the Act for the purpose of trial of Election Petitions.
- (vi) "Elector" means a person, who was entitled to vote at the election, to which the election petition relates, irrespective of the fact whether he has actually voted at such election or not.
- (vii) "High Court" means the High Court of Himachal Pradesh at Shimla.
- (viii) "Petition" means an election petition filed under section 80 and 81 of the Act.
- (ix) "Prescribed" means prescribed under these rules or the rules made under the Act or the Code of Civil Procedure, 1908.
- (x) "Registrar" means the Registrar of the High Court and includes Registrar (Vigilance), District and Sessions Judge (Rules), Deputy Registrar and any other official of the Registry of the Court authorised by the Chief Justice to discharge the functions of the Registrar under this Chapter.
- (xi) Any other words or phrases used in this Chapter, but not herein defined, shall be given the meaning ascribed to them in the Act or in the Code of Civil Procedure, 1908, (as amended upto-date) as the case may be.

2. *Jurisdiction.*—No election held within the territories, which are subject to the jurisdiction of the High Court, shall be called in question except by an election petition presented to the High Court in accordance with the provisions of part VI of the Act

Sections 79 (e) and Section 80



3. *Designation of Judges.*—The Chief Justice shall, from time to time, assign one or more Judges of the High Court for the purpose of trial of petitions *Section 80-A(2).*

4. *Benches.*—(a) The petitions shall ordinarily be tried by any one of the designated Judges. *Section 80-A(2).*

(b) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same designated Judge, who may, in his discretion, try them separately or in the one or more groups. *Section 86(3).*

5. *Place of trial.*—Petitions shall normally be tried at the place where the seat of the High Court is for the time being situated. The designated Judge or Judges, may, however in his or their discretion, and in consultation with the Chief Justice, direct that in the interest of justice or for the sake of convenience any election petition shall be tried and/or heard, either wholly or partly, at a place other than the place of the seat of the High Court. *Section 80-A(3).*

6. *Limitation.*—A petition shall not be filed earlier than the date of election of the returned candidate; and may be filed by any candidate at the election or by any elector within forty-five days from the date of election of the returned candidate or, if there are more than one returned candidates at the election and the dates of their election are different, the later of those two dates. *Section(81)*

7. *Security for costs.*—(a) At the time of presenting an election petition, the petitioner shall deposit in the High Court, in accordance with the rules for making deposits in the said Court, a sum of Rs. 2,000 (Rupees two thousand only) as security for cost of the respondents *Section 11(71).*

(b) During the course of the trial of the petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct. *Section 11(72)*

8. *Parties to a petition.*—A petitioner shall join as respondent to his petition :—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed all the returned candidates; and

(b) any candidate against whom allegations of any corrupt practice are made in the petition. *Section 82.*

9. *Added Respondent.*—Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent. *Section 86 (4).*

10. *Security from added respondent.*—No person shall be entitled to be joined as a respondent under the last preceding rule unless he has given such security for costs as the High Court may direct. In the absence of a specific order in that respect, such a respondent shall be required to deposit a sum of Rs. 1,000 (Rupees one thousand only) as security for costs. *Section 118.*

11. *Contents of Petition.*—(i) A petition may be presented, either in person or through an Advocate-in-charge, for calling in question any election on one or more of the grounds specified in sub-section (1) of section 103 and section 101 of the Act by any candidate at such election or any elector, and

(a) shall contain a concise statement of the material facts on which the petitioner relied, arranged so far as possible in strictly chronological order; *Section 83 (1).*

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and *Section 83 (1).*

(c) shall be signed and verified by the petitioner in the manner laid down in Order VI, rule 15 of the Code of Civil Procedure, for the verification of pleadings.

(ii) The petition will be presented to the Registrar within office hours on any working day and his receipt showing the date and time of filing of the petition shall be obtained. The receipt shall, also indicate, the date on which the petitioner or his Advocate, if any, must appear before the Registrar for removal of formal defects, if any. The said receipt shall be in Form 'A' appended to these rules.

“(iii) Any document other than the election petition itself, but connected with the petition which is not filed with the election petition may be filed either with the Registrar or in the Election Branch with an endorsement in Form 'E', appended to these rules, of the date of filing the same made on the first page of such document under the dated signature of the party filing the documents or his Advocate.”

“(iv) An inward diary or a receipt register shall be maintained in the Election Branch in which receipt of all petitions, applications, documents and papers connected with election petitions shall be entered on the very day on which those are received in the Branch. The register shall be put up to the Registrar at 4.00 p.m. on every working day and shall be signed by him by mentioning the time and date of his signature so as to close the entries of that particular day. The serial number in the receipt register and the date of filing the document in question in the Election Branch shall be endorsed on the document in the relevant column of a square rubber stamp of the prescribed type. The endorsement on the document shall be signed by the receipt Clerk or Diarist or the Dealing Assistant in the Election Branch, as the case may be.”

12. *Papers accompanying the petition.*—Every petition shall be accompanied by:—

(a) Where the petitioner alleges any corrupt practice, in the petition, by an affidavit, in the prescribed form, duly sworn before a competent judicial authority or an Oath Commissioner under his seal or stamp in support of the allegation of such practice and the particulars thereof. In the verification the petitioner shall separately specify by reference to the numbered paragraphs of the affidavit, the facts which he verifies of his personal knowledge and those which are verified on information received and believed to be true. In the latter class of averments, the petitioner shall further specify the source of his information. *Section 83 (1).*

(b) *Schedules or annexures to the petition referred to in the body of the Petition.*—Such schedules or annexures shall also be signed by the petitioner and verified in the same manner as the petition. *Section 83 (2).*

- (c) The documents in the possession or power of the petitioner, on which he relies in support of his petition, together with a list thereof in Form 'B' appended to these Rules.
- (cc) A list of any other documents on which the petitioner relies in support of his claim which shall be in Form 'BB' appended to these rules and where any such document is not in possession or power any of the petitioner he shall, if possible, state in whose possession or power it is.
- (d) The original receipt for the deposit of security for cost.
- (e) A cloth-lined strong envelope of the size of not less than 10" x 15" for keeping documents;
- (f) Twice as many copies of the election petition as there are respondents mentioned in the petition. Every such copy shall be attested by the petitioner under his own signature to be true copy of the petition; and
- (g) As many pre-paid Registered Acknowledgement Due Postal Covers as there are respondents mentioned in the petition, with the addresses of all those respondents being inscribed either in type or in neat and legible manuscript on the respective covers. The petitioner or the Advocate incharge should ensure that the postage pre-paid on the covers is enough to cover the requisite postage keeping in view the weight of the copy of the petition and its annexures and schedules, if any, which have to be despatched therein. If necessary, special postal covers may be got prepared for the purpose which should be of such size as may be able to contain conveniently a copy each of the election petition and its annexures and schedules;
- (h) A statement giving an address at which service of notices or other processes may be made on the petitioner. The said address shall be within the local limits of the High Court. Where the petitioner fails to file the said address, his petition shall be liable to be dismissed. Due service of all processes and communications shall be deemed to have been effected on him by properly addressing, pre-paying and posting by registered post, a letter containing the said processes or communications and unless the contrary is proved the service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Service of all processes and communications on the counsel for the petitioner, if any, shall be deemed to be due service of the same on the petitioner.

**13. General requirements regarding petitions.**—(a) All petitions shall be clearly typed or cyclostyled or printed on only one side of foolscap Government (Judicial) paper in double space with at least a quarter margin.

(b) All copies of the petition shall be similarly prepared, but on ordinary paper.

(c) All copies of the petition shall conform to the original, page by page and line by line.

(d) The petition and the copies shall be pagemarked legibly and the Annexures and Schedules, if any, attached to the petition, shall be consecutively page-marked in the same manner.

(e) A cleanly typed, cyclostyled or printed index will be put at the top of the petition showing the serial number of the document, its date, particulars and the page or pages on which it occurs in the papers filed by the petitioner or the Advocate in charge and shall be signed and dated by the Petitioner or such Advocate.

(f) The petitions and their annexures and schedules shall be in the English language. Any original document or any copy of a document, which is not in the said language shall be accompanied by its translation into English, duly certified by the petitioner or the Advocate incharge to be a correct translation of the original or of the copy as the case may be.

(g) The petitioner or the Advocate incharge shall ensure that the petition does not suffer from unnecessary prolixity and does not contain any scandalous or vexatious allegations which are not necessary to be made for deciding the matters really in issue.

14. *Scrutiny of papers.*—(a) The Registrar shall cause the petition and its accompanying documents to be scrutinised under his personal supervision. On the conclusion of such scrutiny the Registrar shall make an endorsement on the back of the last page of the index to the effect that the papers have been scrutinised and if the same have been found to be in order or not, if the Registrar finds that the papers are not complete or do not, otherwise, comply with the requirements of these rules or the provisions of Part-VI of the Act, an endorsement to that effect would be made specifying the defaults or the omissions which require rectification. The endorsement would also show separately if the security for costs referred to above has been deposited by the petitioner before the filing of the petition, and, if the petition has filed within limitation.

(b) On such scrutiny if it is found that the petition does not comply with the requirements of section 81 or section 82 or section 117 of the Act, the Registrar shall make a specific endorsement to that effect.

(c) If some other defect is detected in the petition or it is found that it does not comply with any other rule, the petition will be returned with such endorsement as hereinbefore specified, to the petitioner or the Advocate incharge on the date specified in the receipt under rule 11 (ii). The said endorsement shall specify the time within which the defect or defects mentioned therein shall be removed and the said time shall not exceed seven days in any case. The rectified petition shall be refiled by the petitioner or the advocate incharge within the time so specified.

(cc) It shall be the duty of the petitioner or the Advocate in-charge to bring to the notice of the Registrar the fact of the removal of the defects or any one or more of the defects pointed out by the office on the very day on which the defect or defects are removed. The fact of removal of defect or defects having been brought to the notice of the Registrar shall be endorsed on the petition by the Registrar in his own handwriting under his dated signatures specifying with reference to the serial number of the defects or otherwise the particular defects which have been removed.

(d) A list of all the petitions, which are not in conformity with the mandatory provisions of sections 81, 82 or 117 of the Act, shall be put on a special notice-board meant for notices relating to election petitions and a copy of such list shall be sent to the Secretary of the High Court Bar Association before 3.30 p.m. on the day preceding the date for which these petitions are directed to be placed before any one of the designate Judges. The list shall specify the date on which and the name of the designated Judge before whom the petition will be placed for necessary directions or orders in respect of non-compliance with the rules. Such date of hearing shall also be communicated to the petitioner or the Advocate incharge on the date specified in the receipt under rule 11 (ii).

15. *Preliminary hearing of defective petitions.*—(a) All such petitions, (i) which have been *prima facie* found by the Registry as not complying with the provisions of section 81 or section 82 or section 117 of the Act or (ii) which have been filed incomplete or in any other way not complying with these rules and which the petitioners or the advocates incharge may not have taken back or (iii) which may have been refiled without necessary compliance or (iv) which may have been refiled after the expiry of the period allowed by the Registry, shall be brought up before any of the designated Judges on a date which has either being noted by the petitioners or the Advocates incharges or which has been specified in the list prepared, notified, and sent to the High Court Bar Association before 3-30 p. m. on the preceding date, or which has been notified to an un-represented petitioner by registered post.

(b) If the petition does comply with the provisions of the aforesaid three sections of the Act, but does not comply with any of the other rules or requirements contained in this Chapter, the High Court may allow the petitioner or the Advocate incharge such further time not exceeding one week to do the needful on such terms as it may deem fit to impose.

(c) All such cases reported by the Registry shall be included at the top of the Daily Cause list of the designated Judge.

(d) If the High Court finds that sections 81, 82 and 117 of the Act have been duly complied with and that there has been substantial compliance with the other rules and it is not necessary to have any other rectification or amendment made in the petition or other papers, the High Court shall order notice of the petition to issue to the respondent or respondents as the case may be.

16. *Issue of process.*—In all cases covered by rule 15(d) and where the petition is on scrutiny found by the Registrar to be in order, the Registry shall issue notices of the petition in Form 'C' appended to these rules, accompanied by a copy of the petition, together with copies of the schedules and annexures, any, to each of the respondents named in the petition under Registered (Acknowledgement Due) postal covers filed by the petitioner as also in the ordinary manner through the Administrative Subordinate Judge or the Senior Subordinate Judges or any other Civil Court of the district or place within whose jurisdiction the respective respondents stated to reside or carry on business. The endorsement on the notice requiring such Subordinate Judge or Civil Court to effect service on the respondent shall specify that the aforesaid subroinate Judge or Court shall make every effort to have service effected immediately and, in any event, to submit a detailed report of service well within time so as to reach the Registry or this Court before the date of scrutiny. The notices shall be for the settlement of issues and shall be issued for an actual date which shall not be more than four weeks ahead of the date on which the notices are despatched. The notices shall be in Form 'B' appended to these rules and shall specify, *inter alia*—

- (a) the date on which the respondents are required to appear in person or by an advocate ;
- (b) the date of scrutiny on which the case will be put up before one of the designated Judges with a full and complete report of the office about service of notices; and
- (c) a direction to the effect that the case would be heard *ex parte* if the respondent does not put in appearance in the Registry of the Court and serve notice of having done so on the petitioner or the Advocate incharge before the date of hearing.

17. *Substituted service.*—If on the date fixed for scrutiny the designated Judge, before whom the case is put up, finds from the office report or the report of the process-serving agency or the postal authorities that any one or more of the respondents in any particular cases appears to be evading service or it is otherwise not possible to effect personal service on him expeditiously, he may direct substituted service to be effected on such respondent in any of the customary modes including publication in a newspaper.

18. *Appearance.*—Any appearance, application or act required or authorised by the Act or these rules to be made or done by a party may be made or done by the party in person or by his recognised agent, or by an Advocate, appearing, applying or acting, as the case may be, on his behalf :

Provided that any such appearance shall, if the High Court so directs, be made by the party in person :

Provided further that, unless the context other wise requires, the recognised agent of a party

shall be deemed to be the petitioner or the respondent, as the case may be, for the purposes of these rules.

19. *Scrutiny.* It shall be the duty of the petitioner or the Advocate incharge to appear before the Court on the date of scrutiny and to comply with the order or directions that may be given by the designated Judge at the time of the scrutiny.

20. *Appearance of respondents.*—(a) As soon as possible after the receipt of notice of the petition, each respondent shall enter before the Registrar appearance in writing. The appearance may be entered through an Advocate or in person. In either event the full, complete and detailed address of the respondent shall be entered on the memorandum of appearance. Thereafter, service of any notice or order of the Court or of the Registry shall be deemed to be sufficient if it is either communicated to the Advocate, or in case where the respondent is not so represented, sent by ordinary post to such address of the respondent as has been furnished by him.

(b) Immediately after entering appearance, the respondent or his Advocate, as the case may be, shall serve on the Advocate incharge of the case or on the petitioner, if he is not represented by counsel, a notice of having entered appearance.

(c) Any respondent, who does not admit the correctness of the allegations or of the claim made in the petition, shall file a written statement in the Registry of the Court at least two days before the date of hearing, replying to the petition and the allegations of the petitioner para-wise.

(d) The written-statement shall be typed-written or cyclostyled or printed in double space on one side of foolscap judicial paper and shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings.

(e) A spare copy of the written-statement shall be filed in the Registry which shall be attested by the respondent, concerned, or by his Advocate to be a true copy of the original written-statement.

(f) The written-statement shall be in English and any documents attached to it or filed by the respondent subsequently shall be either in English or be accompanied by their respective translations into English which should be certified by the respondent concerned or by his Advocate to be true and correct translation of the original documents, in question.

(g) The written-statement shall be accompanied by all documents in the possession or power of the respondent on which he bases his defence. Where he relies on other documents in support of his defence, he shall enter such documents in a list to be added or annexed to the written statement. A document which ought to be entered in the list, referred to above but which has not been so entered shall not, without the leave of the High Court, be received in evidence on the respondent's behalf at the hearing of the petition.

The documents produced shall be accompanied by a list in Form 'B' appended to these rules.

(h) The written-statement shall, also be accompanied by a cloth-lined strong envelope which shall not be smaller in size than 10" x 15", for keeping documents.

(i) The respondent shall serve on the Advocate-incharge or on the petitioner himself, if he is not represented by an Advocate, an exact copy of the written-statement and its enclosures, if any, at least two days before the date of hearing.

21. *Commencement of trial.*—(a) The trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and to answer the claim or claims made in the petition.  
*Section 86(4). Explanation.*

(b) At the commencement of the trial or on such adjourned date for which all the respondents have been served or are deemed to have been served, the High Court shall scrutinise the pleadings of the parties and may, within such time as it may deem fit, permit the petitioner to file a replication in reply generally to any written statement or direct him to file a better statement or better particulars in respect of any matter brought out in any written statement.

(c) At the hearing of the petition, after pleadings have been filed, the High Court shall proceed to frame issues arising out of the pleadings of the parties which are necessary for the determination of the matters in controversy between the parties and postpone further hearing of the petition, but shall fix a day for the production of such evidence as the case requires. The Court shall, also, fix an intermediary date to watch the return of the summons of the witnesses. The parties or their counsel shall appear before the Registrar on the said date and obtain necessary orders with regard to re-summoning or otherwise the witnesses who might not have been served by the said date.

(d) Within 5 days of the framing of the issues, the parties shall file any other or additional documents which are in their possession or power, and, also, file within the same period a list of all the documents which are not in such possession or power for the respective parties but on which they propose to rely at the trial of the case indicating therein the person in whose possession, power or custody such documents may be available, and the relevancy of such documents.

(e) Within ten days of the date on which the issues are framed, the parties shall admit or deny the respective documents filed by the other side in the Registry of the Court by making an endorsement on each document under the signatures of party concerned or his Advocate whether the document is admitted or denied, or how much of a document is admitted or denied.

(f) The preceding sub-rule shall not derogate from the right of the parties to serve on the counsel for the other side notice of admission or denial of documents or of admission or denial of facts.

(g) Parties may also, with the leave of the Court, serve interrogatories on the counsel for any other party for being replied to in accordance with law.

22. (i) A party desirous of requiring the attendance of his witnesses at the trial of the petition through the process of the High Court shall, within fifteen days of the settlement of the issues, make an application for the purpose, to the Registrar. The said application shall contain the names of the said witnesses and a gist of the facts to be proved by each one of them. A copy of the said application shall, also be delivered by the party or his Advocate to the Advocate for the opposite party or if the same is not represented by an Advocate to the said party, at the same time it is made to the Registrar:

Provided that a party entitled to lead evidence in rebuttal may, move an application requiring the attendance of additional witnesses not already summoned, through the process of the High Court, within a period of two days from the date opposite party concludes its evidence.

(ii) The said application shall be listed for hearing before the designated Judge by the Registrar on the next day of its filing in the Registry of the Court for passing necessary orders for summoning the witnesses provided at the designated Judge may request for reasons to be recorded in writing to summon any witness or witnesses if he is of the opinion that evidence of such a



witness or witnesses is not material for the decision of the petition or that the party summoning such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(iii) After the designated Judge has made necessary orders on the said application, the party concerned shall, within a period of three days pay into the High Court such sum of money as is ordered by the Registrar to defray travelling and other expenses for one day's attendance of the witness or witnesses ordered to be summoned. In fixing the said amount regard shall be had to the fees prescribed by the High Court in Appendix-I to Chapter 5-C of Volume-I of the Rules and Orders of the High Court.

(iv) Process fee in accordance with the provisions of Chapter 5-B of Volume IV of the Rules and Orders of the High Court and registered A. D. postal covers, pre-paid and correctly addressed to the witness or witnesses, ordered to be summoned, shall also, be fixed by the party concerned within the aforesaid period of three days. The procedure for the service of the summons on the witnesses shall be, as far as practicable as prescribed in Chapter 7-A to 7-H of Volume IV of the Rules and Orders of the High Court, as also, by registered post.

On an application of any of the parties to a petition or otherwise, a designated Judge may, also direct summons to be served on a witness through a special bailiff of the High Court. For the said purpose, the party concerned may be required to pay the expenses of the said bailiff in addition.

(v) The summons to a witness shall be in form 'D' appended to these rules and the witness shall be paid his travelling and other expenses by the Registrar after he had attended the High Court on the date mentioned in the summons.

(vi) Service of a witness by registered post under sub-rule (iv) shall be deemed to be sufficient service for all purposes including those of Order 16, rule 12 of the Code of Civil Procedure.

23. *Amendment.*—The High Court may upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of corrupt practice not previously alleged in the petition. Section 86(5).

24. *Procedure.*—(a) Subject to the provisions of the Act and of these rules, every petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. Section 87 (1).

(b) The High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(c) The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of the Act and these rules, be deemed to apply in all respects to the trial of an election petition.

Section (87) (2).

(d) No document shall however, be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

(e) No witness or other person shall be required to state for whom he has voted at an election.

Section 94.

... (f) No witness shall be excused from answering any question as to any matter relevant to the points in issue in the trial of a petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture. *Section 95 (1).*

Provided that —

- (1) (a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the High Court; and
- (b) an answer given by a witness to a question put by or before the High Court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceedings.

- (2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code (45 of 1860), or Part VII of the Act, arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by the Act or any other law. *Section 95 (2).*

- (3) The reasonable expenses incurred by any person in attending to give evidence may be allowed by the High Court to such person, and shall, unless the High Court otherwise directs, be deemed to be part of the costs. *Section 96.*

**25. Relief that may be claimed.**—(a) A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. *Section 84.*

— (b) (i) When in an election petition declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other Party may give evidence to prove that the election of such candidate would have been void, if he had been the returned candidate and a petition had been presented calling in question his election: *Section 97 (1).*

Provided that the returned candidate or such other party as aforesaid, shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security referred to in sections 117 and 118, respectively, of the Act.

(ii) Every notice referred to in sub-rule (b) (i) above shall be accompanied by the statement and particulars required by section 83 of the Act in the case of an election petition and shall be signed and verified in like manner. *Section 97 (2).*

**26. Miscellaneous.**—(a) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded. *Section 86 (6).*

(b) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. *Section 86 (7).*

(c) The High Court may give such other orders or directions in the course of a trial of the petition as may appear to it to be necessary in the interests of justice or for expediting the trial and disposal of the case or to prevent abuse or process of Court.

27. *Costs.*—(a) Costs shall be in the discretion of the High Court:

Section 119.

Provided that where a petition is dismissed under clause (a) of section 98 of the Act, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.

(b) If the costs have not been fixed by the designated Judge under clause (b) of section 99 (1) of the Act, the costs shall be taxed by the Registrar within a week after the conclusion of the trial of the petition at a time of which at least two day's notice will be given to all the Advocates of the parties who were represented by counsel.

28. *Communication of orders of the High Court.*—The Registrar shall, as soon as may be after the conclusion of the trial of an election petition, intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

29. *Arrangements of file.*—At any time before the commencement of hearing of a petition and before every adjourned hearing thereafter the Registrar shall arrange the file of each election case into the following six parts :—

Part I—Orders in the main case.

Part II—Pleadings and issues.

Part III—Evidence.

Part IV—Documents filed the petitioner.

(To be kept in the cover filed by the petitioner).

Part V—Documents filed by the respondents.

(To be kept in the cover filed by the respondent concerned).

Separate covers of different respondents shall be marked with the number of the party concerned in the array of respondents.

Part VI—Miscellaneous applications, replies thereto and orders thereon.

*Note.*—*Natht Be* (Part B of the case) will contain the following :—

(a) Notices;

(b) Office notes and correspondence;

(c) Reports of service; and

(d) Other miscellaneous papers.

30. *Paging and indexing.*—Each part of the file shall be separately page-marked and indexed by the Office and checked before the case is sent to the designated Judge one day before every hearing.

31. *Copies of evidence, etc.*—On an application moved by any party to a petition, the designated Judge may allow uncertified carbon copies of the evidence and of all or any of the interlocutory orders being given to the applicant or his counsel on paying for the same at the rates mentioned in rule 6 (iii) of Chapter 5-B, of Volume V of the High Court Rules and Orders.

*The expression "Court Stenographer" used in the said rule 6 (iii) shall for purpose of election petitions be deemed to include any Private Secretary or Judgement Writer of the High Court.*

Such copies shall be issued only after the Judge has signed the original record and corrected, if any, have been carried out in the copies.

FORM 'A'

Receipt to be obtained from the Registrar, under rule 11 (ii) Serial No. ....

Received from Shri ..... Election Petition No. .... 19

Petitioner,

ii

versus

Respondents.

entered in the register relating to Election Petitions at serial No. .... this, .... day of .... 19

The petitioner/Shri ..... Advocate to appear before the Registrar for removal of formal defects, if any, on, ....

Registrar.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Counterfoil. ....

Signature of the petitioner/Shri ..... , Advocate in token of having obtained the receipt.

FORM 'B'

List of documents produced by petitioner/respondent.

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Election Petition ..... of 19.

Petitioner.

Versus

Respondents.

List of documents produced with the petition (or at first hearing) on behalf of petitioner respondent.

The list was filed by ..... this day ..... of 19.

Serial No.	Description and date, if any of the document	What the document is intended to prove	What became of the document		Remarks
			If brought on the record, the Exhibit mark put on the document	If rejected, date of return to the party and signature of party or pleader to whom the document was returned	
1	2	3	4	5	6

Signature of party or Advocate producing the list.

FORM 'BB'

List of documents relied upon by the petitioner/respondent.

## IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Election Petition No. .... of 19 ..

Petitioner.

Versus

Respondent.

This list was filed by ..... this ..... day of 19 ..

Signature of party or advocate producing the list.

Serial No.	Description and date, if any of the document	What the document is intended to prove	In whose possession the document is	What became of the document		Remarks
				If brought on the record, the Exhibit mark put on the document	If rejected, the date of return to the party and signature of party or advocate/ Pleader to whom the document was returned	
1	2	3	4	5		6

Signature of party or Advocate producing the list.

FORM 'C'

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

NOTICE TO THE RESPONDENT

Election Petition No.....of 1967.

*Petitioner.*

*versus*

*Respondent.*

To

Shri/Shrimati.....

WHEREAS Shri/Shrimati.....has instituted an election petition against you, you are hereby required to appear in this Court in person or by an Advocate, duly instructed and able to answer all material questions relating to the petition, on the.....day of....., 19 , at 10 O' clock in the forenoon to answer the petition and to produce on that day—

- (a) all the documents in your possession or power on which you intend to rely in support of your defence, and
- (b) a list of other documents on which you rely and which are not in your possession or power.

Take notice that if you do not appear in the Registry of this Court and serve notice of having done so on the Advocate incharge of the case or on the petitioner himself, if he is not represented by an Advocate, before the aforesaid date and do not serve on the said Advocate or the petitioner an exact copy of the written statement and its enclosures, if any, to be filed by you, at least two days before the aforesaid date, the petition will be heard and determined in your absence.

Also, note that the case will be put up before one of the designated Judges for scrutiny on.....day of.....19 .

A copy each of the petition and its annexures and enclosures is enclosed.

By order,

*Registrar.*

Endorsement No....., dated the.....

Forwarded to the Senior Subordinate/Administrative/Subordinate Judge....., for effecting service on the respondent/respondents. Service may please be effected immediately and a detailed report marked "IMMEDIATE—ELECTION PETITION" sent to the Superintendent, Election Petition Branch, High Court of Himachal Pradesh, so as to reach him before the.....day of....., 19 , without fail.

*Registrar.*

FORM 'D'

## IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

## SUMMONS TO WITNESS

Election Petition No. .... of 19 ..

Petitioner.

versus

Respondent.

To

Shri/Shrimati .....

WHEREAS your attendance is required to ..... on behalf of the  
 ..... petitioner/respondent in the above-noted petition you are hereby required  
 (personally) to appear before this Court on the ..... day of .....  
 19 .. at 10 O'clock in the forenoon and to bring with you (or send to this Court).

A sum of Rs. .... being your travelling and other expenses and subsistence allowance for one day, has been deposited by the ..... petitioner/respondent in this Court and will be paid to you after you have attended this Court on the aforesaid day. If you fail to comply with this Order without lawful excuse, you will be subject to the consequence of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

Given under my hand and the seal of the Court, this ..... day of ..... 19 ..

By order,

Superintendent,  
 Election Petitions Branch.

Notice.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. .... will be tendered to you for each day's attendance beyond the day specified.

By order of the Hon'ble the Chief Justice and Judges,

Registrar.



FORM 'E'

Facsimile of the rubber stamp to be used in the Election Branch for making endorsement on the documents filed in that Branch as required by sub-rule (iii) of Rule 11:—

ELECTION BRANCH

RE :

Election Petition No..... of 19 .

Date of filing .....

Serial Number in the receipt register.....

Diarist :  
Himachal Pradesh High Court,  
Shimla.

APPENDIX-III

RULES REGARDING APPLICATION UNDER SECTION 256 OF THE  
INDIAN INCOME TAX ACT, 1961

1. Every application under section 256 (1) of the Indian Income-tax Act, 1961 for an order by the High Court requiring the Income-tax Appellate Tribunal to state and refer the case to the High Court shall contain a brief statement of facts and the point or points of law on which a reference is desired. Such application shall be supported by an affidavit by the assessee, or some other person acquainted with the facts and shall be accompanied by a copy of the said application and such documents and copies of such of the orders of the Income-tax officer and the Income-tax Appellate Tribunal as may be necessary for understanding the point or points of law on which a reference is desired.

The application shall also be accompanied by a certificate from the income-tax Appellate Tribunal to the effect that the assessee has not withdrawn his application for reference under section 256 (1) *ibid* before the said Tribunal.

2. Every application under section 256 (2) of the Act made to the High Court for an order requiring the Income tax-Appellate Tribunal to treat the application made before the latter under section 256 (1) as made within time shall be accompanied by a copy of the application made to the Tribunal together with a copy of the relevant order of the Tribunal and such other documents as may show that the application made to the Tribunal was within time or should be treated as such.

3. Every application under section 256 (1) of section 256 (2) of the Act shall be entitled Income-tax Act, 1961, Case No. .... of .....19 .

Name of the Assessee

..... Applicant.

The Commissioner of Income-Tax.

..... Respondent.

Name of assessee.

4. If the Court hearing the application does not reject it in limits, notice shall be issued to the Assessee or the Income-Tax Commissioner, as the case may be, to show cause against the application.

5. Counsel presenting an application under section 256 (1) or section 256 (2) of the Act shall be bound to accept service on behalf of his client of any notice issued by the High Court until the case has been finally disposed of or a change of counsel has been notified to the Court.

6. In the event of the Court requiring the Income tax Appellate Tribunal to state and to refer a case, notice of order containing the question or questions of law on which the case is to be stated and to be referred shall be sent to the Income-tax Appellate Tribunal.

7. All cases stated by the Appellate Tribunal shall as far as possible be divided into paragraphs numbered consecutively and shall concisely state such facts and documents, with copies of the latter annexed, as may be necessary to enable the court to decide the question raised hereby.

8. The party at whose instance a reference has been made shall have the statement of the case, printed and shall file three copies of such prints in the High Court office within two months from the date of the filing of the reference in the High Court.

9. The Court hearing applications under section 256 (1) or 256 (2) of the Act or deciding cases stated and referred to under the Act shall be a Bench of two Judges unless the Chief Justice orders that any application or reference shall be heard by a Bench of more than two Judges.

10. At the hearing of such applicants and cases the Court and the parties shall be at liberty to refer to the whole of the contents of the documents annexed thereto.

11. The Rules contained in this Chapter shall, so far as may be and with necessary modifications and adaptations, also apply to proceedings of a similar nature under any other Act including those under:—

- (i) Section 33 of the H. P. General Sales Tax Act, 1968;
- (ii) Section 57 or 60 of the Indian Act, 1899;
- (iii) Section 27 of the Workmen's Compensation Act, 1923;
- (iv) Section 21 of the Excess Profit Tax Act, 1940 read with Section 256 of the Indian Income Tax Act ;
- (v) Section 19 of the Business Profits Tax Act, 1947 read with section 256 of the Indian Income Tax Act.

#### APPENDIX-IV

Rules under section 20 clauses (i) and (ii) of the Court Fees Act, 1870 as framed by the High Court of Himachal Pradesh and approved by the State Government.

1. *Grades of Court for purposes of process fee.*—The Civil Courts of the Himachal Pradesh shall, for the purpose of levying fees, be divided into three grades as shown in the annexed table:—

Grade 1	Civil Courts 2
First	The High Court.
Second	District Courts.
Third	Courts subordinate to the District Court.

2. *Fees for each grade of Court.*—Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely :—

Name of Process	Court of first grade	Courts of second grade	Courts of third grade
	Rs. np.	Rs. np.	Rs. np.
Summons, notice or other process not being a warrant of arrest or of attachment.	3.00	1.50	0.75
Warrant of attachment	6.00	3.00	1.50
Warrant of arrest	6.00	3.00	3.00

3. *Separate process to issue for each person to be served and a separate fee to be charged.*—A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served; and subject to the rule next following, a separate fee shall be charged for each process.

In a case in which it is desired to attach the property of more than one person (judgment-debtors or their sureties), in the same village, a combined warrant of attachment shall be issued and only one attachment fee shall be charged, but if the property lies in more than one village a separate fee shall be charged for each village.

4. *Process fee when a process has to be served on 4 or more persons.*—When any process, other than a warrant of arrest or of attachment, is to be served upon four or more persons being parties, one fee only shall, according to the scale in rule 2, be charged in respect of the first four processes, and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four, provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court :—

	Courts first grade	Courts of second grade	Courts of third grade
	Rs. np.	Rs. np.	Rs. np.
Rate of additional fee	..	0.75	0.37
Maximum	..	22.50	15.00

*Note.*—This rule is not applicable to processes issued for service on witnesses.

5. Except as otherwise directed by any provisions of law, a fee of 75 nP. shall be chargeable for any process issued by a Criminal Court, whether such process be served through the Process-serving Establishment or through the Police:

Provided that no fee shall be chargeable for any process of a Criminal Court relating to a cognizable offence, as defined in section (4) (i)(f) of the Code of Criminal Procedure or for any process relating to a non-cognizable offence, if in the same case a process relating to a cognizable offence is issued :

Provided also that no fee shall be charged by any Criminal Court in the Punjab for any individual process issued in a criminal case at the instance of a Municipal Committee in the Punjab, if such Municipal Committee has compounded for the process fees, otherwise payable by it, by paying such sum of money to the Government of Himachal Pradesh for such period and in such form as the Governor of the Himachal Pradesh may from time to time direct.

6. *Process issued by and sent to Courts in India to be served free of charge.*—A process issued by any Court in India whether of Civil or Criminal jurisdiction, shall be served free of charge by any Court in the Himachal Pradesh if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated. When any court in the Himachal Pradesh, whether of Civil or Criminal jurisdiction, transmits a process for service or execution to any Court beyond its jurisdiction, a certificate shall be endorsed on the process that the fee chargeable under rule 2 or rule 4, as the case may be, has been levied.

7. *Travelling allowance of process server.*—Ordinarily process-servers should travel on foot when proceeding to serve or execute processes; but in special cases, the Judge, of the Court issuing the process, may permit the journey to be made by railway. In such cases the permission should be in writing and the railway fare should be charged to the budget heads. Travelling allowance of process-servers under process-serving establishment is not charged to the person at whose instance the process is issued.